Supreme Court, U.S.
FILED
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No. _____

In The
Supreme Court of the United States

D.A. AND E.A.,

Petitioners,

v.

STATE OF UTAH,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Utah

PETITION FOR WRIT OF CERTIORARI

SCOTT L. WIGGINS
ARNOLD & WIGGINS, P.C.
American Plaza II, Suite 105
57 West 200 South
Salt Lake City, Utah 84101
(801) 328-4333
Counsel of Record
Attorneys for Petitioner E.A.

JIM C. SHIRLEY
400 Main Street
P.O. Box 299
Lovelock, Nevada 89419
(775) 273-2613
Attorney for Petitioner D.A.

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

Whether the "status exception" applies to termination of parental rights proceedings and is therefore an exception to the constitutional minimum contacts due process requirements of the Fourteenth Amendment of the United States Constitution.

LIST OF PARTIES

Petitioner D.A., the natural mother

Petitioner E.A., the natural father

W.A., the minor child

Respondent, the State of Utah

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OPINIONS BELOW

The opinions of the Utah Supreme Court in *D.A. v. State* (*State ex rel. W.A.*), 2002 UT 127, 63 P.3d 607, and *E.A. v. State* (*State ex rel. W.A.*), 2002 UT 126, 63 P.3d 100, entered December 20, 2002, are contained in Appendix (hereinafter "App.") 1-29 and 30-36, respectively. The opinion of the Utah Court of Appeals in *E.A. v. State* (*State ex rel. W.A.*), 2002 UT App. 72, Case Number 20000461, entered March 7, 2002, is contained in App. 41-70. The Findings of Fact, Conclusions of Law, and Decree of the juvenile court in Case No. 948450, entered June 27, 2000, and March 22, 2000, are contained in App 71-74 and 75-78. The Ruling on Motion to Dismiss of the juvenile court in Case No. 948450, entered April 16, 1999, is contained in App. 79-81.

JURISDICTION

The judgments of the Utah Supreme Court were entered on December 20, 2002. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. amend. XIV, § 1, which states, in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;. . . .

STATEMENT OF THE CASE

D.A. and E.A. are the natural parents of W.A., their son, who is a juvenile. In December 1993, the State of Oklahoma filed felony charges against D.A. and E.A. Thereafter, at the request of D.A. and E.A., a Kentucky court granted temporary custody and guardianship of W.A. to his sister, D.D.

In July 1996, D.A. pleaded nolo contendere to sexual abuse of a minor. The Oklahoma court sentenced D.A. to ten years in prison. E.A. pleaded nolo contendere to lewd molestation of a child and sexual abuse of a minor, and was sentenced to twenty years on the first charge and life imprisonment on the second.

Sometime between 1995 and 1998, D.D. unilaterally moved to Utah with W.A. Shortly after arriving in Utah, D.D. contacted the Utah Division of Child and Family Services, claiming that she was no longer able or willing to care for W.A. The State of Utah filed a dependency petition concerning W.A., after which the juvenile court adjudicated W.A. a dependent child as to his relationship with D.D. and awarded the State of Utah custody and guardianship.[1]

On October 8, 1998, the State of Utah and W.A.'s guardian ad litem filed a petition to terminate the parental rights of W.A.'s out-of-state parents. Both D.A. and E.A. moved to dismiss the petition, contending that Utah's

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[1] The State of Utah never adjudicated the dependency petition as to the custodial rights of D.A. and E.A.

long-arm jurisdiction statute, *see* Utah Code Ann. § 78-27-24 (2002), did not grant the juvenile court jurisdiction over them and, even if it did, the assertion of personal jurisdiction over them violated the due process requirements of the Fourteenth Amendment of the United States Constitution. *See* App. 79-81.

The juvenile court denied the motion to dismiss, concluding that the parents had sufficient contacts with the State of Utah to allow the juvenile court to exercise personal jurisdiction over them pursuant to subsections 78-27-24(6) and (3) of the Utah long-arm statute. App. 79-80. Additionally, the juvenile court concluded that termination of parental rights proceedings constitute a "status exception" to personal jurisdiction. App. 80-81.

After trial and after taking the matter under advisement, the juvenile court terminated the parental rights of both D.A. and E.A., concluding that they were unfit parents and had abandoned W.A. App. 71-74 and 75-78. Prior to the juvenile court's order terminating the parental rights of D.A., D.A. was released from prison.

D.A. and E.A. appealed separately to the Utah Court of Appeals.[2] The Utah Court of Appeals reversed the termination of E.A.'s parental rights, reasoning that although E.A. had sufficient contacts with the State of Utah to satisfy due process requirements of the Fourteenth

[2] There were no allegations that either D.A. or E.A. purposefully established any contacts with the State of Utah. The State neither alleged that either D.A. nor E.A. ever set foot in the State of Utah nor did it identify any purposeful act by D.A. or E.A. related to the State's action for the termination of their parental rights.

Amendment, Utah's long-arm statute did not confer personal jurisdiction over him. App. 45-48, ¶¶9-16. In addition, the Utah Court of Appeals held that the status exception does not apply to proceedings involving the termination of parental rights. App. 49-60, ¶¶17-38. The Utah Court of Appeals certified D.A.'s appeal to the Utah Supreme Court. App. 40. The State of Utah petitioned the Utah Supreme Court for a writ of certiorari, which the court granted along with E.A.'s conditional cross-petition. App. 37-39.

The Utah Supreme Court concluded that the juvenile court appropriately exercised personal jurisdiction over D.A. and E.A. under Utah law, *see* Utah Code Ann. § 78-3a-110(13) (2002), because they received actual notice of the parental rights termination proceeding and because W.A. lived in the State of Utah when the termination proceeding commenced. App. 9, ¶18. Moreover, the Utah Supreme Court held that the "status exception" extends to termination of parental rights proceedings. App. 12, ¶22.[3] In the course of extending the "status exception" to termination of parental rights proceedings, the court concluded that it is irrelevant whether D.A. or E.A. had minimum contacts with the State of Utah, the forum state. App. 18, ¶28.

[3] Although the Utah Supreme Court issued separate opinions, the court recognized the appeals of D.A. and E.A. as companion cases and thereby utilized and expressly adopted the same analysis in both cases. App. 3, ¶6 n.2; App. 35, ¶11.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. BY EXTENDING THE "STATUS EXCEPTION" TO TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, THE UTAH SUPREME COURT DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH ANOTHER STATE COURT OF LAST RESORT.

According to well-established case law of this Court, due process requires that a nonresident have sufficient "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343 (1940)). Moreover, "'[i]t is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 2183 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 1239-40 (1958)). Consequently, the determining inquiry is whether "the defendant's conduct and connection with the forum State are such that he [or she] should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 567 (1980).

Relying on the "status exception" set forth in footnote 30 of *Shaffer v. Heitner*, 433 U.S. 186, 208 n.30, 97 S.Ct.

2568, 2582 n.30 (1977),[4] the Utah Supreme Court concluded that the "status exception extends to parental termination proceedings." App. 12, ¶22. The court concluded further that because the "status exception" extends to termination of parental rights proceedings, "it is irrelevant whether D.A. [and E.A.] had minimum contacts with the state." App. 18, ¶28.

By extending the "status exception" to termination of parental rights proceedings, the Utah Supreme Court decided an important federal question concerning the due process requirements of personal jurisdiction in a way that conflicts with the decision of another state court of last resort. *See* Supreme Court Rule 11(b). The Utah Supreme Court's decision directly conflicts with the Hawaii Supreme Court's decision in *In re Doe*, 926 P.2d 1290, 1299 (Haw. 1996). In *In re Doe*, the Hawaii Supreme Court refused to extend the "status exception" to termination of parental rights proceedings and thereby applied the traditional due process analysis that requires "minimum contacts" and "purposeful availment" prior to exercising personal jurisdiction over a nonresident parent. *Id.* at 1296-99; *see also In re Vernon R.*, 991 P.2d 986, 988-89 (N.M. Ct. App. 1999) (refusing to extend the "status"

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[4] Footnote 30 of this Court's opinion in *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569 (1977), states:

> C.f. Smit, The Enduring Utility of In Rem Rules: A Lasting Legacy of *Pennoyer v. Neff*, 43 Brooklyn L.Rev. 600 (1977). We do not suggest that jurisdictional doctrines other than those discussed in text, such as the particularized rules governing adjudications of status, are inconsistent with the standard of fairness. See, *e. g.*, Traynor 660-661.

Id. at 208 n.30, 97 S.Ct. at 2569 n.30.

exception rationale to termination of parental rights proceedings). This Court should resolve the conflict between the state courts of last resort concerning the "status exception" and its extension to termination of parental rights proceedings.

II. BY EXTENDING THE "STATUS EXCEPTION" TO TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, THE UTAH SUPREME COURT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

In the course of extending the "status exception" to termination of parental rights proceedings, the Utah Supreme Court expressly recognized that this Court "has not yet directly addressed the status exception as it applies to termination of parental rights." App. 14-15, ¶24. The review by this Court of the Utah Supreme Court's decision is also necessary in light of the exceptional importance of this case.

The exceptional importance of this case is demonstrated by this Court's declaration that the parent-child relationship is a fundamental liberty interest. In *Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388 (1982), this Court noted that

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of the child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of

> their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Id. at 753-54, 102 S.Ct. at 1394-95; *see also Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626 (1923) (including family relationships in the "liberty" of which a state cannot deprive any person without due process of law under the Fourteenth Amendment to the United States Constitution).

The impact of the Utah Supreme Court's decision goes well beyond the termination of the parental rights of D.A. and E.A. By holding that the "status exception" extends to termination of parental rights proceedings, the Utah Supreme Court exempted a state's exercise of personal jurisdiction over a nonresident parent from the minimum contacts due process requirements of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *See* Supreme Court Rule 11(c). Such a holding requires further scrutiny by this Court because the Utah Supreme Court's exemption of termination proceedings from the constitutional minimum contacts due process requirements also allows a state to deprive a nonresident parent of a fundamental liberty interest without due process of law. *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S.Ct. 339, 343 (1940)); *see also Meyer*, 262 U.S. at 399, 43 S.Ct. at 626.

III. BY EXTENDING THE "STATUS EXCEPTION" TO TERMINATION OF PARENTAL RIGHTS PROCEEDINGS, THE UTAH SUPREME COURT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The Utah Supreme Court's extension of the "status exception" to termination of parental rights proceedings is a decision of an important federal question that conflicts with relevant decisions of this Court. *See* Supreme Court Rule 11(c). Review by this Court is further warranted inasmuch as the Utah Supreme Court's holding is a decision that, by its very nature, calls for an exercise of this Court's power of supervision.

As authority for its extension of the "status exception" to termination of parental rights proceedings, the Utah Supreme Court referred to the "status exception" set forth in footnote 30 of *Shaffer v. Heitner*, 433 U.S. 186, 208 n.30, 97 S.Ct. 2569, 2582 n.30 (1977). However, a close reading of the majority opinion in *Shaffer* demonstrates that the Court more than likely did not intend to include even child custody adjudications within its general reference to "adjudications of status," which the Utah Supreme Court argues are to be excepted from the minimum contacts due process analysis set forth in *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945). Importantly, the majority opinion in *Shaffer* offers divorce as the sole example of an adjudication of status. *Shaffer*, 433 U.S. at 201, 97 S.Ct. at 2578. In light of the foregoing, it is highly unlikely that the *Shaffer* Court intended to include child custody cases, much less termination of parental rights proceedings, within whatever exception

footnote 30 of *Shaffer* preserved. *See* Rhonda Wasserman, *Parents, Partners, and Personal Jurisdiction*, 1995 U. Ill. L. Rev. 813, 873 (1995).

The Utah Supreme Court's holding also conflicts with this Court's decision in *May v. Anderson*, 345 U.S. 528, 73 S.Ct. 840 (1953), which involved a custody dispute. In that case, this Court held that because the mother was not domiciled, resident, or present in the state where the decree was issued and personal jurisdiction was not obtained over her, the trial court could not cut off her immediate and personal right to the custody of her minor children. *See id.* at 533-35, 73 S.Ct. at 843-44. In the course of the decision, this Court concluded that "a mother's right to custody of her children is a personal right entitled to at least as much protection as her right to alimony." *See id.* at 534, 73 S.Ct. at 843. Hence, *May* most plausibly stands for the proposition that a custody decree entered without personal jurisdiction over one of the contestants violates due process and is not entitled to interstate enforcement. *See* Wasserman, 1995 U. Ill. L. Rev. at 878.

The Utah Supreme Court's decision also conflicts with this Court's decision in *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 98 S.Ct. 1690 (1978). In *Kulko*, this Court expressly held that the "status" exception does not apply to the financial aspects of a marital dissolution such as alimony, child support, and property division. *Id.* at 100-01, 98 S.Ct. at 1701. If the "status" exception is not applicable to the financial aspects of a divorce proceeding, then the "status" exception is all the more improper in cases

that permanently affect the fundamental right and liberty interest of the parent-child relationship.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their Petition for Writ of Certiorari.

DATED this 18 day of March, 2003.

Respectfully submitted,

SCOTT L WIGGINS
ARNOLD & WIGGINS, P.C.
Attorneys for Petitioner E.A.

JIM C. SHIRLEY
Attorney for Petitioner D.A.

2002 UT 127

This opinion is subject to revision before final publication in the Pacific Reporter.

IN THE SUPREME COURT OF THE STATE OF UTAH

State of Utah in the interest of W.A., a child under eighteen years or age.

D.A.,

Appellant,

v.

State of Utah,

Appellee.

No. 20010081

FILED

December 20, 2002

Third District Juvenile, Sandy
The Honorable Olof A. Johansson

Attorneys: Mark L. Shurtleff, Att'y Gen., Carol L.C. Verdoia, Asst. Att'y Gen., Salt Lake City, for petitioner
Martha Pierce, Salt Lake City, Guardian Ad Litem
Jim C. Shirley, Salt Lake City, for respondent

On Certification from the Utah Court of Appeals

DURRANT, Associate Chief Justice:

¶1 This appeal concerns the termination of parental rights. The State of Utah and W.A., acting through a guardian ad litem, filed a motion to terminate the rights of both

of W.A.'s parents. A juvenile court granted this joint motion, reasoning that the parents were unfit and had abandoned W.A. On appeal, W.A.'s mother presents four main arguments. First, she claims that the juvenile court lacked personal jurisdiction over her under both Utah and federal law. Second, she argues that the juvenile court incorrectly admitted evidence of a conviction obtained by a nolo contendere plea. Third, she contends that the juvenile court incorrectly admitted evidence of a juvenile court adjudication. Finally, she asserts that the juvenile court erred in denying her motion to amend the termination order. We affirm.

BACKGROUND

¶2 W.A., a juvenile, is the biological son of D.A. and E.A. In December 1993, the State of Oklahoma filed felony charges against both his mother, D.A., and his father, E.A. Thereafter, a Kentucky court granted temporary custody and guardianship of W.A. to his sister, D.D.

¶3 On July 2, 1996, D.A. pleaded nolo contendere to sexually abusing a minor child and was sentenced by an Oklahoma court to ten years in prison. That same day, E.A. pleaded nolo contendere to lewd molestation of a child and sexual abuse of a minor. As a result of this plea, an Oklahoma court sentenced E.A. to a term of twenty years for the first charge and a term of life imprisonment for the second.

¶4 Sometime between 1995 and 1998, D.D. moved to Utah with W.A. In February of 1998, D.D. contacted the Division of Child and Family Services ("the State") and informed it that she could no longer care for W.A. The State then filed a dependency petition regarding W.A. A juvenile court adjudicated W.A. a dependent child on

February 25, 1998, and it awarded the State temporary custody and guardianship.

¶5 On October 8, 1998, the State and W.A.'s guardian ad litem filed a motion to terminate D.A.'s and E.A.'s parental rights. Both parents moved to dismiss, reasoning that Utah's long-arm statute, *see* Utah Code Ann. § 78-27-24 (2002), did not afford the juvenile court personal jurisdiction over them, and even if it did, such an assertion of jurisdiction violated the due process requirements of the Fourteenth Amendment. The juvenile court disagreed, concluding that the parents had sufficient contacts with the State of Utah to allow it to exercise personal jurisdiction under subsections 78-27-24(3) and (6) of the Utah Code. Alternatively, the court reasoned that it had personal jurisdiction over the parents under the status exception because a parental termination proceeding involves the "status" of a child vis-a-vis its parents.

¶6 Following a trial, the juvenile court terminated the parental rights of both D.A. and E.A., concluding that they were unfit under sections 78-3a-407(3), -408(2)(e), and -408(4)(a) of the Utah Code, and had abandoned W.A. pursuant to sections 78-3a-407(1) and -408(1)(c) of the Utah Code.[1] D.A. appealed,[2] and the Utah Court of Appeals

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[1] We note that both of W.A.'s parents remained incarcerated through at least the completion of the termination proceeding. Specifically, as of that time, D.A. resided in a Texas penitentiary, and E.A. resided in an Oklahoma prison.

[2] E.A. also appealed. The court of appeals addressed the merits of his appeal, however, and reversed. *E.A. v. State (State ex rel. W.A.)*, 2002 UT App 72, ¶ 39, ___ P.3d ___. We then granted certiorari and resolve that appeal in a separate opinion issued today. *State v. E.A. (State ex rel. W.A.)*, 2002 UT ___, ___ P.3d ___.

certified her appeal to us pursuant to rule 43 of the Utah Rules of Appellate Procedure. We have jurisdiction under Utah Code Ann. § 78-2-2(3)(b) (2002).

¶7 On appeal, D.A. argues that the juvenile court erred in four respects. First, she claims that the juvenile court incorrectly concluded that it had personal jurisdiction over her. Second, she argues that the juvenile court improperly admitted into evidence her Oklahoma conviction because it was obtained through a nolo contendere plea. Third, she contends that the juvenile court incorrectly admitted into evidence the February 25, 1998, adjudication order because it violated her constitutional right to confront her accusers. Finally, she asserts that the juvenile court erred in denying her motion to amend its termination order because (1) there was insufficient evidence to support the court's findings under sections 78-3a-407(1), -408(1)(c), and -408(2)(e) of the Utah Code, (2) the court improperly used her sexual abuse conviction to reach its conclusion under 78-3a-408(4)(a) of the Utah Code, and (3) subsection 78-3a-408(2)(e) of the Utah Code is unconstitutional.

ANALYSIS

I. STANDARD OF REVIEW

¶8 When reviewing a termination petition, "we will disturb the findings and conclusions of the juvenile court only if the evidence clearly preponderates against the findings as made or the court has abused its discretion." *In re S.R.*, 735 P.2d 53, 56 (Utah 1987). Whether a court has personal jurisdiction over a defendant under Utah law and the Fourteenth Amendment of the United States Constitution is a question of law, which we review for correctness,

State Dep't of Soc. Serv. v. Vijil, 784 P.2d 1130, 1132 (Utah 1989), though we will review the trial court's underlying findings of fact using the "clearly erroneous" standard, *see Kamdar & Co. v. Laray Co.,* 815 P.2d 245, 248 (Utah Ct. App. 1991). A similar standard of review applies in determining whether evidence is admissible under rules 410 and 803 of the Utah Rules of Evidence. *See Cal Wadsworth Constr. v. City of St. George,* 898 P.2d 1372, 1378 (Utah 1995) ("The issue of whether evidence is admissible is a question of law, which we review for correctness, incorporating a clearly erroneous standard of review for subsidiary factual determinations." (internal quotations and citation omitted)); *see also State v. Martin,* 2002 UT 34, ¶ 29, 44 P.3d 805 ("The question of whether evidence is admissible can be either a question of discretion, [reviewed under an] abuse of discretion [standard], or a question of law, which we review for correctness.").

¶9 Where our review "requires us to examine statutory language, we look first to the plain meaning of the statute." *Young v. Salt Lake City Sch. Dist.,* 2002 UT 64, ¶ 10, 52 P.3d 1230. Moreover, we "may affirm a judgment, order, or decree appealed from if it is sustainable on any legal ground or theory apparent on the record, even though that ground or theory was not identified by the lower court as the basis of its ruling." *Boud v. SDNCO, Inc.,* 2002 UT 83, ¶ 10, 54 P.3d 1131 (internal quotations and citation omitted).

II. PERSONAL JURISDICTION

¶10 D.A. first challenges the juvenile court's conclusion that it had jurisdiction to terminate her parental rights. In particular, she asserts that Utah law did not

afford the court personal jurisdiction over her as a nonresident defendant, and even if it did, the due process requirements of the Fourteenth Amendment of the United States Constitution barred the court from exercising personal jurisdiction over her. We disagree.

A. Utah Law

¶11 We have applied various tests in determining whether personal jurisdiction exists over a nonresident defendant. The test utilized most frequently asks (1) "whether Utah's long-arm statute encompasses the acts alleged in the complaint," and (2) whether exercising "personal jurisdiction over [the nonresident] defendant[ ] comports with the due process requirements of the Fourteenth Amendment of the United States Constitution." *Starways, Inc. v. Curry,* 1999 UT 50, ¶ 6, 980 P.2d 204.

¶12 In other cases, however, we have stated that a three-pronged test should be used to determine whether a court has personal jurisdiction. For example, in *Phone Directories Co. v. Henderson,* 2000 UT 64, ¶ 12, 8 P.3d 256, we stated that

> [u]nder Utah law, a three-part inquiry is used to determine . . . personal jurisdiction: (1) the defendant's acts or contacts must implicate Utah under the Utah long-arm statute; (2) a "nexus" must exist between the plaintiff's claims and the defendant's acts or contacts; and (3) application of the Utah long-arm statute must satisfy the requirements of federal due process.

¶13 We have even opined that whether personal jurisdiction exists over a nonresident defendant depends exclusively on the requirements of the Fourteenth

Amendment because "any set of circumstances that satisfies due process will also satisfy [Utah's] long-arm statute." *SII MegaDiamond, Inc. v. Am. Superabrasives Corp.*, 969 P.2d 430, 433 (Utah 1998); *see also Arguello v. Indus. Woodworking Mach. Co.*, 838 P.2d 1120, 1122 (Utah 1992) (assuming Utah's long-arm statute would also be satisfied if exercising personal jurisdiction over the nonresident defendant satisfies due process); *Synergetics v. Marathon Ranching Co.*, 701 P.2d 1106, 1110 (Utah 1985) (stating that the reach of Utah's long-arm statute "must be extended to the fullest extent allowed by due process of law").

¶14 We now clarify the law regarding this issue. The proper test to be applied in determining whether personal jurisdiction exists over a nonresident defendant involves two considerations. First, the court must assess whether *Utah law* confers personal jurisdiction over the nonresident defendant. This means that a court may rely on *any* Utah statute affording it personal jurisdiction, not just Utah's long-arm statute. Second, assuming Utah law confers personal jurisdiction over the nonresident defendant, the court must assess whether an assertion of jurisdiction comports with the due process requirements of the Fourteenth Amendment.

¶15 This test is merely a refinement of our previous tests governing the assertion of personal jurisdiction. It recognizes that the legislature may provide for the extension of personal jurisdiction over an individual in statutes other than the long-arm statute. There is nothing talismanic about the long-arm statute. While maintaining a single list of the state's jurisdictional reach may be more efficient, no reason exists to limit the legislature's authority

to enact extensions of personal jurisdiction in other sections of the code.

¶16 Under this new test, however, any legislative enactment of personal jurisdiction, in or out of the long-arm statute, cannot justify on its own the assertion of jurisdiction. The true safeguard on the extension of personal jurisdiction is the constitutional due process analysis, with its focus on minimum contacts and on traditional notions of fair play and substantial justice. Therefore, this test recognizes the legislature's authority to provide for the extension of personal jurisdiction as limited by established constitutional due process requirements.

¶17 In the instant action, the juvenile court concluded that it had personal jurisdiction over D.A. pursuant to subsections 78-27-24(3) and (6) of Utah's long-arm statute. Although this is arguably correct, we find it unnecessary to reach the issue because another statute governing the termination of parental rights is directly on point. Subsection 78-3a-110(13) of the Utah Code deals explicitly with a juvenile court's jurisdiction over a nonresident parent. It declares that "[i]f the parents, parent, or guardian . . . cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in minor's cases under this chapter as to any absent parent or guardian, provided that due notice has been given." [3] Utah Code Ann.

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[3] Although the majority of the rules governing parental termination proceedings are listed in sections 78-3a-401 to -415 of the Utah Code, subsection 78-3a-110(13) applies to parental termination proceedings because it states that "the fact of [the] minor's presence within the state shall confer jurisdiction on the court *in proceedings in minor's*

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§ 78-3a-110(13) (2002). Notification to the parent "vest[s] the court with jurisdiction over the parent or guardian . . . to the same extent as if the person . . . was served personally within the state." § 78-3a-110(13)(c). Hence, according to its plain language, subsection 78-3a-110(13) confers personal jurisdiction over a nonresident parent if (1) that parent receives notification of the parental termination proceeding, and (2) his or her child resides in the state at the time the proceeding commences.[4]

¶18 Here, it is clear that D.A. received actual notice of the parental termination proceeding because she opposed the juvenile court's authority to terminate her parental rights throughout the proceeding. Moreover, it is undisputed that W.A. lived in the State of Utah at the time the proceeding was initiated. The juvenile court therefore had authority to exercise personal jurisdiction over D.A. pursuant to subsection 78-3a-110(13) of the Utah Code.

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cases under this chapter." Utah Code Ann. § 78-3a-110(13) (2002) (emphasis added).

[4] Counsel for the State and the guardian ad litem argue that we should look to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Utah Code Ann. §§ 78-45c-101 to -318 (2002), or its predecessor, the Uniform Child Custody Jurisdiction Act (UCCJA), Utah Code Ann. §§ 78-45c-1 to -26 (1998), to resolve this case. We do not reach the question of whether the UCCJEA or the UCCJA applies to this case, however, because of our determination that subsection 78-3a-110(13) of the Utah Code provides adequate justification for the assertion of personal jurisdiction.

B. Due Process Requirements of the Fourteenth Amendment

¶19 Despite our conclusion that Utah law confers personal jurisdiction over D.A., federal law nevertheless mandates that we consider whether exercising jurisdiction over her comports with the due process requirements of the Fourteenth Amendment. The juvenile court concluded that asserting jurisdiction over D.A. did not run afoul of the Fourteenth Amendment because she had sufficient contacts with the State of Utah. The court further concluded that even if D.A. lacked the requisite degree of contact, asserting personal jurisdiction over her was sustainable under the status exception on the ground that parental termination proceedings involve the adjudication of a child's "status" vis-a-vis its parents. We address the juvenile court's latter conclusion and affirm.[5]

¶20 The United States Supreme Court has explained that the Due Process Clause of the Fourteenth Amendment to the United States Constitution permits a court to assert personal jurisdiction over a nonresident defendant where that defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945) (internal quotations and citation omitted). An exception to this minimum contacts requirement exists, however. Indeed, the Supreme Court observed more than a century ago that cases involving the *status* of a

[5] We do not reach the issue of whether D.A. had sufficient contacts with Utah because of our conclusions regarding the status exception.

plaintiff are unique and can be pursued in the plaintiff's home state even if that judicial forum does not have personal jurisdiction over the defendant. *Pennoyer v. Neff,* 95 U.S. 714, 734-35 (1877). In particular, the Court in *Pennoyer* stated the following:

> To prevent any misapplication of the views expressed in this opinion [regarding the Fourteenth Amendment], it is proper to observe that *we do not mean to assert, by any thing we have said, that a state may not authorize proceedings to determine the status of one of its citizens towards a non-resident,* which would be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil *status* and capacities of all its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on [in] its territory.

Id. at 734 (emphasis added).

¶21 The Supreme Court reaffirmed the existence of the status exception in *Shaffer v. Heitner,* 433 U.S. 186 (1977). There, the Court explained that "*Pennoyer* itself recognized . . . that cases involving the personal status of the plaintiff, such as divorce actions, could be adjudicated in the plaintiff's home State" despite the defendant's absence from the state. *Id.* at 201. Importantly, the Court also noted that although an assertion of personal jurisdiction must ordinarily comply with the standard set forth in *International Shoe,* nothing in the Fourteenth Amendment "suggest[s] that jurisdictional doctrines . . . , such as the particularized rules governing adjudications of status, are inconsistent with the standard of fairness." *Id.* at 208 n.30 (citing Roger J. Traynor, *Is This Conflict Really Necessary?,*

37 Tex. L. Rev. 657, 660-61 (1959)[6]). Thus, the Court has acknowledged that the status exception comports with due process requirements when properly applied even though the defendant lacks minimum contacts with the forum.

¶22 Given that the United States Supreme Court has consistently recognized that certain types of cases involving status may not offend the Fourteenth Amendment, we must decide whether the status exception extends to parental termination proceedings. We conclude that it does for three reasons. First, parental termination proceedings clearly involve the determination of a child's status vis-a-vis its parents. *See In re Interest of M.L.K.*, 768 P.2d 316, 319 (Kan. Ct. App. 1989) (holding that the status exception extends to termination proceedings

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[6] In his article, Judge Traynor wrote that special considerations surrounding the parent-child relationship "would *normally* preclude jurisdiction over a non-resident defendant having no contact with the forum state." *Id.* at 661 (emphasis added). However, the sentence that immediately follows in Judge Traynor's article sets forth an exception to his assertion of normal preclusion:

> Nevertheless, . . . we must recognize that the state where a child is present must be competent to regulate his custody whether his parent is present or not, and if the parent cannot be found or has failed to discharge his parental obligations, that state, given the best notice reasonably possible, should be free to promote the interest of the child by permitting his adoption.

Id. at 662, Read in context, Judge Traynor's intended message regarding the assertion of jurisdiction over the parent-child relationship becomes clear. As the dissent in a recent Utah Court of Appeals case noted, the *Shaffer* Court, by "favorably citing to this article, . . . appears [to have] contemplated that child custody adjudications, and more specifically termination proceedings, are included within the status exception." *E.A. v. State (State ex rel. W.A.)*, 2002 UT App 72, ¶ 48, ___ P.3d ___ (Bench, J., dissenting).

because the "[t]ermination of parental rights is nothing more than a determination of the legal status between the natural parent and the child"); *In re M.S.B.,* 611 S.W.2d 704, 706 (Tex. Civ. App. 1980) (declaring that "[i]t cannot be doubted that the parent-child relationship creates a status, and that a suit seeking to terminate such relationship is a status adjudication"). Second, such proceedings are "analogous to [a] court's termination of the marriage relationship between a husband and wife," *In re Interest of M.L.K.,* 768 P.2d at 319, and the Supreme Court has determined that the status exception applies to divorce proceedings, *see Shaffer,* 433 U.S. at 208 n.30 (citing Traynor, *supra,* at 660-61); *Pennoyer,* 95 U.S. at 734-35. Finally, although there is some authority to the contrary,[7] the majority of jurisdictions addressing the issue have concluded that the status exception extends to parental termination proceedings. *See In re Appeal in Maricopa County, Juvenile Action No. JS-734,* 543 P.2d 454, 459-60 (Ariz. Ct. App. 1975); *In re Interest of M.L.K.,* 768 P.2d at 319-20; *In re J.J.C.,* No. E2000-01223-COA-R3-CV, 2001 Tenn. App. Lexis 171, at *3-5 (Tenn. Ct. App. Mar. 15, 2001); *Graham v. Copeland (In re Adoption of Copeland),* 43 S.W.3d 483, 487 (Tenn. Ct. App. 2000) (relying on status

[7] Besides those cases ruling that personal jurisdiction could not be asserted over the nonresident parent due to lack of notice, *see, e.g., In re One Minor Child,* 411 A.2d 951, 952-53 (Del. 1980), and those cases that conclude personal jurisdiction is lacking without discussing the status exception, *see, e.g., Phillips v. Thornerfelt,* No. 85-CA-1075-S, 1986 Ky. App. Lexis 1116, at *17-18 (Ky. Ct. App. Apr. 15, 1986), our research reveals only two cases that have declined to extend the status exception to parental termination proceedings: *In re Doe,* 926 P.2d 1290, 1299 (Haw. 1996), and *In re Vernon R.V.,* 991 P.2d 986, 988 (N.M. Ct. App. 1999).

exception in parental rights termination proceeding against a father in prison); *In re M.S.B.,* 611 S.W.2d at 706. *Cf. Wenz v. Schwartze,* 598 P.2d 1086, 1091-92 (Mont. 1979) (concluding personal jurisdiction over a parent is not necessary in order to terminate parental rights, without specifically discussing status exception), *cert. denied,* 444 U.S. 1071 (1980); *In re A.E.H.,* 468 N.W.2d 190, 198-200 (Wis.), (focusing on child's contacts with the state in order to terminate parental rights), *cert. denied,* 502 U.S. 925 (1991).

¶23 Likewise, we note that the majority of jurisdictions that have addressed whether the status exception applies in the similar situation of child custody determinations have concluded that it does. *See People ex rel. Wyoming v. Stout,* 969 P.2d 819, 821 (Colo. Ct. App. 1998); *Balestrieri v. Maliska,* 622 So. 2d 561, 563 & n.1 (Fla. Dist. Ct. App. 1993) (citing cases from fourteen other states applying the status exception in child custody cases); *Bartsch v. Bartsch,* 636 N.W.2d 3, 6-7 (Iowa 2001); *Joliff v. Joliff,* 829 P.2d 34, 36 n.5 (Okla. 1992); *In re S.A.V.,* 837 S.W.2d 80, 84 (Tex. 1992). Hence, there is persuasive authority to extend the status exception to parental termination proceedings.

¶24 Despite opportunities to clarify the status exception's application to parent-child relationships,[8] the

[8] *See Wenz,* 598 P.2d at 1092, *cert. denied,* 444 U.S. 1071 (1980) (holding, among other things, "that personal jurisdiction over a parent is not necessary to the termination of his parental rights to a minor child, so long as the parent has actual notice of the termination proceedings or the District Court ... makes an effort reasonably calculated to provide notice to the parent"); *In re Marriage of Hudson,* 434 N.E.2d 107, 117-19 (Ind. Ct. App. 1982), (holding that "the trial

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United States Supreme Court has not yet directly addressed the status exception as it applies to termination of parental rights. Contrary to D.A.'s arguments, our decision to extend the status exception to parental termination proceedings is consistent with the Court's decision in *May v. Anderson,* 345 U.S. 528 (1953). In that case, the Court addressed whether the Full Faith and Credit Clause of the United States Constitution required Ohio to enforce a child custody decree rendered in Wisconsin even though the Wisconsin court lacked personal jurisdiction over the defendant mother when it issued the decree. A majority of the Court concluded that the Full Faith and Credit Clause did not require Ohio to accept the disposition made in Wisconsin. *Id.* at 528-29, 535.

¶25 In reaching that conclusion, four justices within the majority reasoned that it was "unnecessary to determine the children's legal domicile because, even if it be with their father [in Wisconsin], that does not give Wisconsin, certainly as against Ohio, the personal jurisdiction that it must have in order to deprive their mother of her personal right to [custody]." *Id.* at 534. D.A. insists that this statement in *May,* namely, that a child's domicile is insufficient to confer personal jurisdiction over a nonresident parent, precludes us from extending the status

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court's assertion of jurisdiction over the custody proceeding without obtaining *in personam* jurisdiction . . . did not violate . . . due process rights" after discussing the *Shaffer* court's language regarding the status exception), *cert. denied,* 459 U.S. 1202 (1983); *In re A.E.H.,* 468 N.W.2d at 200-206, (determining that the lower court properly exercised jurisdiction under the UCCJA after broadly construing "custody proceeding" to include termination of parental rights), *cert. denied,* 502 U.S. 925 (1991).

exception to termination proceedings. We find this contention without merit.

¶26 In our view, the statement on which D.A. relies is not controlling legal authority because *May* did not decide whether a child's domicile could confer personal jurisdiction over a nonresident parent. Indeed, although four justices in *May* agreed that the question to be decided was "whether a court of a state, where a mother is neither domiciled, resident nor present, [could] cut off her immediate right to the care, custody, management and companionship of her minor children without having jurisdiction over her *in personam*," *id.* at 533, Justice Frankfurter's concurring opinion, which constituted the fifth and final vote in favor of reversal, significantly narrowed the question addressed by the Court. Specifically, his concurring opinion stated that

> the only thing the Court decides . . . is that the Full Faith and Credit Clause does not require Ohio, in disposing of the custody of children in Ohio, . . . to accept . . . the [custody] disposition made by Wisconsin [over the mother]. The Ohio Supreme Court felt itself so bound. This Court does not decide that Ohio would be precluded from recognizing, as a matter of local law, the disposition made by the Wisconsin court. *For Ohio to give respect to the Wisconsin decree would not offend the Due Process Clause.*

Id., at 535-36 (Frankfurter, J., concurring) (emphasis added). Accordingly, Justice Frankfurter's concurrence establishes the parameters of *May*. *See McAtee v. McAtee*, 323 S.E.2d 611, 616 (W. Va. 1984) ("Justice Frankfurter's concurring opinion . . . is widely acknowledged as having set forth the better view and *May* . . . has been interpreted

in accord with that concurrence."); *see also Fernandez v. Fernandez,* App. No. 85-104-II, 1986 Tenn. App. Lexis 3586, at *3 (Tenn. Ct. App. July 15, 1986) (concluding that "it is widely acknowledged that Mr. Justice Frankfurter's concurring opinion permitting states to recognize foreign custody decrees rendered without personal jurisdiction over an absent parent is the better rule of law"); *Hudson v. Hudson,* 670 P.2d 287, 294 (Wash. Ct. App. 1983) (declaring that "*May* has been interpreted in accord with Justice Frankfurter's concurring opinion"). Since Justice Frankfurter's concurrence establishes the parameters of *May,* the plurality's statement regarding personal jurisdiction over a nonresident parent is mere dicta.

¶27 Moreover, no other jurisdiction has found *May* dispositive when addressing whether the status exception applies to parental termination proceedings. To the contrary, our research reveals that jurisdictions that have had occasion to address *May's* effect on such proceedings have uniformly rejected its applicability. For example, in *In re Appeal in Maricopa County,* the Arizona Court of Appeals distinguished *May* on the ground that *May* dealt with a custody proceeding, rather than a parental termination proceeding, and held that personal jurisdiction was not required over the nonresident parent because "the relationship of parent and child is a status in which the state has a preeminent interest."[9] 543 P.2d at 459; *see also In re J.J.C.,* 2, 2001 Tenn. App. Lexis 171 at *3-5 (distinguishing *May* and concluding that the status exception extended to parental termination proceedings). Thus,

[9] We do not, however, decide in this case whether the status exception extends to child custody proceedings.

contrary to D.A.'s assertion, *May* does not preclude the juvenile court from asserting personal jurisdiction over her.

¶28 Since we conclude that the status exception extends to parental termination proceedings, it is irrelevant whether D.A. had minimum contacts with the state. Nevertheless, we must still determine if exercising jurisdiction in this case otherwise meets the due process requirements of the Fourteenth Amendment. We conclude that it does for the reasons that follow.

¶29 First, it is clear that the interests of this state are paramount to the interests of any other state. W.A. is present in this state and "all relevant information concerning [his] welfare, progress, needs, and potential adoptive family" are easily accessible here. *E.A.*, 2002 UT App 72 at ¶ 54 (Bench, J., dissenting). This state has been financially, emotionally, and physically supporting W.A. since he was adjudicated a dependant child in February 1998. Additionally, our legislature has affirmatively expressed its interest in having Utah courts determine the interests of children located in Utah. *See* Utah Code Ann. § 78-3a-110(13). Perhaps most importantly, we are concerned that if we refuse to exercise authority over D.A., no other state would be able to assert jurisdiction to resolve W.A.'s status. Therefore, because this state clearly has an interest in the outcome of this case paramount to that of any other state, it is only appropriate for the termination of parental rights to occur in Utah.

¶30 Second, we note that statutory provisions amply protected D.A.'s rights in this case. Indeed, she has benefitted significantly from procedural protections provided by Utah's statutes protecting her Fourteenth Amendment

due process rights. As previously mentioned, the statute authorizing jurisdiction provides for, and D.A. actually received, notice of the proceeding. *See id.* Additionally, due to other statutory provisions, she was appointed counsel and given an opportunity to present evidence, to summon witnesses, to have her rights fully and carefully considered by the juvenile court, and to appeal the decisions of that court within thirty days. *See* Utah Code Ann. §§ 78-3a-110, -406, -909, -913 (2002). These procedural protections, along with the notice she received, provided more than adequate safeguards to preserve D.A.'s Fourteenth Amendment due process rights.

¶31 The fact that parental rights have been designated "fundamental liberty interest[s]," *Santosky II v. Kramer,* 455 U.S. 745, 758-59 (1982), does not alter our analysis. Cases dealing with status often involve a fundamental liberty interest. Nevertheless, the United States Supreme Court has allowed courts to exercise jurisdiction in such cases where standards of fairness are not violated. For instance, notwithstanding the fact that the right to marry has been deemed of "fundamental importance," *Zablocki v. Redhail,* 434 U.S. 374, 384 (1978), the Supreme Court in *Shaffer* still recognized it is appropriate for a state to exercise jurisdiction over a non-resident defendant for purposes of terminating a marriage, *see* 433 U.S. at 208 n.30 (citing Traynor, *supra,* at 660-61). D.A.'s rights have been given due consideration. Indeed, the interests of D.A., along with the interests of W.A. and the state, have been given the consideration required by the Termination of Parental Rights Act which expressly states that it was "*designed to safeguard the rights and interests of all parties concerned* and promote their welfare *and that of the state.*" Utah Code Ann. § 78-3a-402(1) (2002) (emphasis

added). However, because courts are mandated to make determinations in the best interest of the child when grounds exist for parental termination, the rights of the child attain importance paramount to the rights of the parent. *See* Utah Code Ann. § 78-3a-402(2). Thus, even though parental rights are a fundamental liberty interest, given the facts of this case, exercising jurisdiction over D.A. is justified.

¶32 After considering these several factors, we conclude that Fourteenth Amendment due process concerns have been met. Accordingly, we hold that the juvenile court's assertion of personal jurisdiction over D.A. comports with the due process requirements of the Fourteenth Amendment.

III. NOLO CONTENDERE PLEA

¶33 Having concluded that the juvenile court had personal jurisdiction over D.A., we next consider whether it correctly admitted as evidence, under Utah Rules of Evidence 803(8) and 803(22), her sexual abuse conviction resulting from a plea of nolo contendere. D.A. contends that Utah Rules of Evidence 410(2) and 803(22) bar admission of such a conviction. We disagree.

A. Utah Rule of Evidence 410(2)

¶34 Utah Rule of Evidence 410(2) provides that evidence of "a plea of nolo contendere" is not admissible "in any civil or criminal proceeding . . . against the defendant who made the plea." Utah R. Evid. 410(2). Because the State did not offer D.A.'s sexual abuse conviction to prove that she had actually committed sexual abuse, we conclude

that rule 410(2) does not bar the admissibility of her conviction.

¶35 In reaching this conclusion, we adopt the First Circuit's reasoning in *Olsen v. Correiro,* 189 F.3d 52 (1st Cir. 1999). In that case, defendants tried to introduce plaintiff Olsen's manslaughter conviction, which resulted from a nolo contendere plea, as an affirmative defense against Olsen's wrongful imprisonment suit. *Id.* at 55-56. Olsen objected to the admission of this evidence, arguing that rule 410 of the Federal Rules of Evidence barred it.[10] *Id.* at 58. The First Circuit admitted the evidence, however, reasoning that the manslaughter conviction was not offered "to prove that Olsen actually committed manslaughter, or to suggest that he was actually guilty of a criminal act . . . [but] to counter Olsen's claim for incarceration-based damages by showing that he was incarcerated for something other than the murder conviction." *Id.* at 61.

¶36 Applying the reasoning of *Olsen* to the instant case, we note that the State sought to introduce D.A.'s conviction to show that she had been sentenced to ten years in prison, not to prove that she had actually committed the crime for which she entered the nolo plea.[11] We

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[10] We note that Utah Rule of Evidence 410 is identical to rule 410 of the Federal Rules of Evidence.

[11] In its final order terminating D.A.'s parental rights, the juvenile court found that "[t]he mother's conviction – sexual abuse of a child – constitutes sexually cruel and abusive conduct towards a child" and held D.A. unfit pursuant to subsection 78-3a-408(4)(a) of the Utah Code, which provides that sexual abuse of a child constitutes prima facie evidence of unfitness. The State concedes that the juvenile court's use of D.A.'s conviction in this manner was improper, but argues that

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therefore hold that Utah Rule of Evidence 410 does not bar the admission of D.A.'s sexual abuse conviction.[12]

B. Utah Rule of Evidence 803(22)

¶37 We next address D.A.'s assertion that Utah Rule of Evidence 803(22) bars the admission of her sexual abuse conviction. In relevant part, that rule provides that "[e]vidence of a final judgment, entered after a trial or upon a plea of guilty (but not upon a plea of nolo contendere), adjudging a person guilty of a crime punishable by death or imprisonment in excess of one year, to prove any fact essential to sustain the judgment" is admissible hearsay. Utah R. Evid. 803(22). Thus, according to the plain language of rule 803(22), certain types of final judgments are admissible, but not final judgments resulting

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the error was harmless because the legitimate use of D.A.'s conviction supported the determination that she was unfit and that she had abandoned W.A. We agree both that the juvenile court incorrectly used the substance of D.A.'s conviction and that this use of her conviction constituted harmless error. *See State v. Evans*, 2001 UT 22, ¶ 20, 20 P.3d 888 ("[H]armless error is an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings."). As explained in part V of this opinion, the fact that the conviction showed that D.A. had been sentenced to ten years in prison was enough to sustain the juvenile court's conclusion that D.A. had abandoned W.A. under subsection 78-3a-407(1) of the Utah Code. The court's improper use of D.A.'s conviction was therefore harmless.

[12] Our conclusion is also supported by the fact that the plain language of Utah Rule of Evidence 410 applies exclusively to evidence of nolo contendere pleas, not evidence of judgments or convictions resulting from such pleas. *See Olsen*, 189 F.3d at 59, 62 (reasoning that "[o]nly the nolo *plea* itself is barred by the relevant language of the rule" and "there is no reason . . . to expand Rule 410 beyond the scope of its plain language").

from nolo pleas. The juvenile court therefore erred in concluding that D.A.'s sexual abuse conviction was admissible on that ground.

¶38 Nevertheless, rule 803(22) does not bar the admission of such convictions pursuant to other evidentiary rules. Indeed, in construing the import of Federal Rule of Evidence 803(22), which is identical to the rule we are analyzing, the First Circuit in *Olsen* explained that

> it is not obvious that Rule 803(22) can be interpreted to bar any evidence; the rule merely says that certain evidence of judgments is not barred by the hearsay rule and that this exception does not apply to judgments entered upon a nolo plea. Evidence of a final judgment that does not fall within this exception to the hearsay rule could still be admissible . . . *because it falls within some other hearsay exception.*

Olsen, 189 F.3d at 62 (emphasis added). Because evidence that is inadmissible under 803(22) may still be admissible on the ground that it falls under another hearsay exception, we hold that rule 803(22) does not affirmatively bar admission of D.A.'s sexual abuse conviction.

C. Utah Rule of Evidence 803(8)

¶39 Given that rules 410(2) and 803(22) do not affirmatively bar the admission of D.A.'s conviction, we next consider whether the juvenile court correctly admitted the evidence pursuant to Utah Rule of Evidence 803(8). As an exception to the hearsay rule, rule 803(8) allows the admission of "[r]ecords, reports, statements, or data compilations, in any form, of public offices or agencies" that set forth "the activities of the office or agency."

Utah R. Evid. 803(8). A judgment rendered by a court of this state falls within this hearsay exception if it is "offered to show the fact of conviction rather than underlying guilt." *Olsen,* 189 F.3d at 63 (citation omitted);[13] *see also* Utah Code Ann. § 78-25-3 (2002); *Price v. Turner,* 28 Utah 2d 328, 330-31, 502 P.2d 121, 123 (1972); *cf. State v. Triptow,* 770 P.2d 146, 146-47 (Utah 1989) (noting that evidence of prior felony convictions was admitted by the district court under rule 803(8)). Because the State sought to introduce D.A.'s conviction to show that she had been sentenced to ten years in prison, not to prove that she had actually committed sexual abuse, the hearsay exception set forth in rule 803(8) of the Utah Rules of Evidence applies to the instant action. Accordingly, we hold that the juvenile court correctly admitted D.A.'s sexual abuse conviction.

IV. ADMISSIBILITY OF THE FEBRUARY 25, 1998, ADJUDICATION ORDER

¶ 40 We now address whether the juvenile court acted correctly in taking judicial notice of its February 25, 1998, adjudication order declaring W.A. a dependent and placing him in the State's custody. D.A. contends that taking judicial notice of this adjudication order violated her due process rights because she did not have the opportunity to confront the witnesses that testified at the adjudication proceeding. We disagree.

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[13] Rule 803(22) of the Federal Rules of Evidence is identical to Utah Rule of Evidence 803(22).

¶41 D.A.'s contention is without merit because she stipulated that the State had custody of W.A. and the adjudication order was admitted exclusively for that purpose. Indeed, at trial, the following conversation occurred:

> MS. NAGLE [The State's attorney]: Well, essentially, your Honor, the purpose of offering [the adjudication order] is to show that [W.A.] has been in the custody of the State since February 25, 1998.
>
> MR. SHIRLEY [D.A.'s attorney]: And we'll stipulate to that fact, so the document's irrelevant.
>
> THE [JUVENILE] COURT: Well, the Court's not going to put a limitation on its own findings. . . . [T]he Court will receive [the adjudication order] and it will stand by itself as a finding by the court as it relates to the child, [W.A.].

Therefore, whether the juvenile court denied D.A. her right to confront her accusers by taking judicial notice of the February 25, 1998, adjudication order is irrelevant because D.A. stipulated to the sole fact for which the adjudication order was submitted.[14] We conclude that the trial court committed no error because D.A.'s stipulation to the only fact that the State sought to prove by the admission of the adjudication order nullified any harm that may have resulted from the admission.

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[14] In reaching this conclusion, we note that D.A. does not assert that the juvenile court erred in taking judicial notice of the adjudication under rule 201(b) of the Utah Rules of Evidence.

V. MOTION TO AMEND THE JUDGMENT

¶42 D.A. next contends that the juvenile court erred in denying her motion to alter or amend its termination decree. Specifically, she asserts that her motion should have been granted because (1) there was insufficient evidence to terminate her parental rights under sections 78-3a-407(1), -408(1)(c) and -408(2)(e),[15] of the Utah Code, and (2) subsection 78-3a-408(2)(e) of the Utah Code is unconstitutional.[16]

¶43 To prevail on her insufficiency of evidence assertions, D.A. "must first marshal all the evidence that *supports* the [juvenile] court's findings" and then demonstrate that the evidence, when viewed in the light most favorable to the court's ruling, is insufficient. *State v. Widdison,* 2001 UT 60, ¶ 60, 28 P.3d 1278. D.A. has failed to meet her marshaling burden, regarding the juvenile court's conclusion that she abandoned W.A. pursuant to subsection 78-3a-407(1) of the Utah Code.

¶44 Two factors support this conclusion. First, contrary to D.A.'s assertion that exhibits 11, 12, and 13 contained the only evidence supporting the juvenile court's abandonment finding, other evidence supported that finding.

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[15] We note that all of the statutory sections cited in this part of our opinion refer to the 1998 version of the Utah Code that was in effect at the time of the termination proceeding. This is important to note because some of the sections were reordered in 2002.

[16] D.A. also asserts that the juvenile court erred in relying on subsection 78-3a-408(4) of the Utah Code as a basis for terminating her parental rights. We agree. As explained later in this section, however, an alternative ground exists that supports the juvenile court's conclusion. Accordingly, the juvenile court's reliance on subsection 78-3a-408(4) was harmless.

Indeed, D.A.'s sexual abuse conviction, which is not mentioned in exhibits 11, 12, or 13, supports the verdict because it demonstrates that she was sentenced to a lengthy prison term.

¶45 Second, a mere reference to where evidence supporting the verdict can be located (i.e., in exhibits 11, 12, and 13) does not constitute marshaling. Rather, marshaling requires that the party challenging the finding show us where the evidence can be located *and list the specific evidence supporting the verdict. See Harding v. Bell,* 2002 UT 108, ¶ 19, ___ P.3d ___. If the rule were otherwise, the marshaling requirement could be easily circumvented. Indeed, a party could satisfy its marshaling obligation by simply placing the record in our hands and declaring that all of the evidence supporting the verdict could be found therein. It is not our obligation, however, "to comb the record for evidence." *Tanner v. Carter,* 2001 UT 18, ¶ 19, 20 P.3d 332. Consequently, we must assume that sufficient evidence supported the juvenile court's abandonment finding under subsection 78-3a-407(1) of the Utah Code. *See, e.g., Utah Med. Prods., Inc. v. Searcy,* 958 P.2d 228, 233 (Utah 1998) ("In light of [appellant's] failure to marshal the evidence, we must assume that all the trial court's findings are supported by the evidence.").

¶46 Because we must uphold the juvenile court's abandonment finding and that finding alone supports the termination of D.A.'s parental rights, *see* Utah Code Ann. § 78-3a-407(1) (stating that "[t]he court may terminate all parental rights with respect to one or both parents if it finds . . . that the parent or parents have abandoned the child"), there is no reason to address whether sufficient evidence supported the other grounds relied on by the juvenile court. For that same reason, it is unnecessary to

address the merits of D.A.'s claim that subsection 78-3a-408(2)(e) of the Utah Code is unconstitutionally vague, violates the procedural due process rights of the Ninth and Fourteenth Amendments to the United States Constitution, and/or runs afoul of the equal protection clauses of both the United States Constitution and the Utah Constitution. Indeed, even if we assume that subsection 78-3a-408(2)(e) is unconstitutional, the juvenile court's conclusion that D.A. had abandoned W.A. pursuant to subsection 78-3a-407(1) is sufficient to justify the termination of D.A.'s parental rights. *See Laney v. Fairview City,* 2002 UT 79, ¶ 7, ___ P.3d ___ (explaining that a court should rule "upon the constitutionality of a statute only when such a determination is essential to the decision in a case" (internal quotations and citation omitted)). Accordingly, we conclude that the juvenile court correctly denied D.A.'s motion to amend.

CONCLUSION

¶47 We affirm the juvenile court's termination of D.A.'s parental rights for the following reasons. First, subsection 78-3a-110(13) of the Utah Code afforded the juvenile court personal jurisdiction over D.A. Second, asserting personal jurisdiction over D.A. complied with the due process requirements of the Fourteenth Amendment because a parental termination proceeding involves the "status" of a child vis-a-vis its parents and exercising jurisdiction in this case comports with Fourteenth Amendment due process requirements. Third, the juvenile court correctly admitted D.A.'s sexual abuse conviction because it was offered to show that she had been sentenced to ten years in prison, not to prove that she had committed sexual abuse. Fourth, the juvenile court correctly admitted

the February 25, 1998, adjudication order because D.A. stipulated that the State had custody of W.A. and the adjudication order was admitted exclusively for that purpose. Finally, we conclude that the juvenile court correctly denied D.A.'s motion to amend the termination order because D.A. failed to marshal all of the evidence supporting the conclusion that she had abandoned W.A. pursuant to subsection 78-3a-407(1) of the Utah Code.

¶48 Justice Howe, Justice Russon, and Justice Wilkins concur in Associate Chief Justice Durrant's opinion.

¶49 Chief Justice Durham concurs in the result.

2002 UT 126

This opinion is subject to revision before final publication in the Pacific Reporter.

IN THE SUPREME COURT OF THE STATE OF UTAH

State of Utah in the interest of W.A., a child under eighteen years or age.

No. 20020236

State of Utah,

Petitioner
and Cross-Respondent,

v.

E.A.,

Respondent
and Cross-Petitioner.

FILED
December 20, 2002

Third District Juvenile, Sandy
The Honorable Olof A. Johansson

Attorneys: Mark L. Shurtleff, Att'y Gen., Annina M. Mitchell, Asst. Att'y Gen., Salt Lake City, for petitioner
Martha Pierce, Salt Lake City, Guardian Ad Litem
Scott Wiggins, Salt Lake City, for respondent

On Certiorari to the Utah Court of Appeals

DURRANT, Associate Chief Justice:

¶1 This case concerns the termination of parental rights. The State of Utah and W.A., acting through a

guardian ad litem, filed a motion to terminate the rights of both of W.A.'s parents. In response, W.A.'s father argued that the juvenile court lacked personal jurisdiction over him under both Utah and federal law. The juvenile court disagreed and terminated his parental rights. The court of appeals reversed, reasoning that Utah's long-arm statute did not confer personal jurisdiction over him and that the status exception was inapplicable to parental termination proceedings.

¶2 On certiorari, we conclude that the juvenile court had personal jurisdiction over the father pursuant to subsection 78-3a-110(13) of the Utah Code. We also conclude that asserting jurisdiction over him complied with the due process requirements of the Fourteenth Amendment because the status exception extends to parental termination proceedings and the facts of this case otherwise support the exercise of jurisdiction. We therefore reverse the court of appeals' decision.

BACKGROUND

¶3 W.A., a juvenile, is the biological son of D.A. and E.A. In December 1993, the State of Oklahoma filed felony charges against both his mother, D.A., and his father, E.A. Thereafter, a Kentucky court granted temporary custody and guardianship of W.A. to his sister, D.D.

¶4 On July 2, 1996, D.A. pleaded nolo contendere to sexually abusing a minor child and was sentenced by an Oklahoma court to ten years in prison. That same day, E.A. pleaded nolo contendere to lewd molestation of a child and sexual abuse of a minor. As a result of this plea, an Oklahoma court sentenced E.A. to a term of twenty years

for the first charge and a term of life imprisonment for the second.

¶5 Sometime between 1995 and 1998, D.D. moved to Utah with W.A. In February of 1998, D.D. contacted the Division of Child and Family Services ("the State") and informed it that she could no longer care for W.A. The State then filed a dependency petition regarding W.A. A juvenile court adjudicated W.A. a dependent child on February 25, 1998, and awarded the State temporary custody and guardianship.

¶6 On October 8, 1998, the State and W.A.'s guardian ad litem filed a motion to terminate D.A.'s and E.A.'s parental rights. Both parents moved to dismiss, reasoning that Utah's long-arm statute, *see* Utah Code Ann. § 78-27-24 (2002), did not afford the juvenile court personal jurisdiction over them and, even if it did, such an assertion of jurisdiction violated the due process requirements of the Fourteenth Amendment. The juvenile court disagreed, concluding that the parents had sufficient contacts with the State of Utah to allow the court to exercise personal jurisdiction under subsections 78-27-24(3) and (6) of the Utah Code. Alternatively, the juvenile court reasoned that it had personal jurisdiction over the parents under the status exception because a parental termination proceeding involves the "status" of a child vis-a-vis its parents.

¶7 Following a trial, the juvenile court terminated the parental rights of both E.A. and D.A., concluding that they were unfit under sections 78-3a-407(3), -408(2)(e),

and -408(4)(a) of the Utah Code,[1] and had abandoned W.A. pursuant to sections 78-3a-407(1) and -408(1)(c) of the Utah Code.[2] E.A. appealed,[3] and the court of appeals reversed. *E.A. v. State (State ex rel. W.A.)*, 2002 UT App 72, ¶¶ 39-40, ___ P.3d ___. The court of appeals reasoned that although E.A. had sufficient contacts with the State of Utah to satisfy the due process requirements of the Fourteenth Amendment, *id.* at ¶¶ 12-13, Utah's long-arm statute did not confer personal jurisdiction over him, *id.* at ¶ 16. The court of appeals further held that the status exception does not extend to parental termination proceedings. *Id.* at ¶ 39.

¶8 We subsequently granted the State's petition for certiorari and E.A.'s cross-petition for certiorari. We have jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(a) (2002). On certiorari, the State contends that either personal jurisdiction over E.A. was not required or that the juvenile court had an adequate basis for asserting personal jurisdiction over E.A. It offers three arguments in support of these alternative positions. First, it claims that

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[1] We note that all of the statutory sections cited in this paragraph of our opinion refer to the 1998 version of the Utah Code that was in effect at the time of the termination proceedings. This is important to note because some of the sections were reordered in 2002.

[2] We note that both of W.A.'s parents remained incarcerated through at least the completion of the termination proceeding. Specifically, as of that time, D.A. resided in a Texas penitentiary, and E.A. resided in an Oklahoma prison.

[3] D.A. also appealed. The court of appeals certified her case directly to us, however. We resolve that appeal in a separate opinion issued today. *D.A. v. State (State ex rel. W.A.)*, 2002 UT ___, ___ P.3d ___.

the Juvenile Court Act, Utah Code Ann. §§ 78-3a-102, -103(a), (h), (r), and -104(1)(c) (2002), the Termination of Parental Rights Act, Utah Code Ann. §§ 78-3a-401 to -415, and the Uniform Child Custody and Enforcement Act, Utah Code Ann. §§ 78-45c-101 to -318, do not require personal jurisdiction over a nonresident parent. Second, it argues that the juvenile court had personal jurisdiction under Utah law because a parental termination proceeding involves the status of a child vis-a-vis his or her parents. Finally, the State argues that Utah's long-arm statute conferred personal jurisdiction over E.A.

¶9 In response, E.A. asserts that (1) none of the juvenile court acts cited by the State displace the requirement that the court have personal jurisdiction over him, (2) the status exception does not extend to parental termination proceedings, and (3) Utah's long-arm statute is inapplicable. Alternatively, he argues that the court of appeals erred in concluding that he had sufficient minimum contacts with the State of Utah to satisfy the due process requirements of the Fourteenth Amendment.

ANALYSIS

I. STANDARD OF REVIEW

¶10 "When exercising our certiorari jurisdiction, we review the decision of the court of appeals and not that of the trial court." *Longley v. Leucadia Fin. Corp.*, 2000 UT 69, ¶ 13, 9 P.3d 762. Moreover, "we review the decision of the court of appeals for correctness." *Brookside Mobile Home Park, Ltd. v. Peebles,* 2002 UT 48, ¶ 11, 48 P.3d 968.

II. PERSONAL JURISDICTION

¶11 This case is a companion case to *D.A. v. State (State ex rel. W.A.),* 2002 UT ___, ___ P.3d ___, and raises an issue identical to an issue addressed in that case. Specifically, as in *D.A.,* E.A. contends that the juvenile court lacked personal jurisdiction over him under both Utah and federal law. We rejected D.A.'s assertions, however, reasoning that (1) subsection 78-3a-110(13) of the Utah Code confers personal jurisdiction over a nonresident parent, (2) the status exception applies to parental termination proceedings, and (3) other considerations in the case showed compliance with Fourteenth Amendment fairness requirements. *Id.* at ¶ 47. We adopt the same analysis here. Accordingly, we hold that the juvenile court appropriately asserted personal jurisdiction over E.A. under Utah law[4] and that asserting personal jurisdiction over him complied with the due process requirements of the Fourteenth Amendment.

CONCLUSION

¶12 We conclude that the juvenile court had personal jurisdiction over E.A. under both Utah and federal law. We therefore reverse the decision rendered by the court of appeals.

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[4] In reaching our conclusion that subsection 78-3a-110(13) of the Utah Code afforded the juvenile court personal jurisdiction over E.A., we note that (1) E.A. received actual notice of the parental termination proceeding as evidenced by his opposition to the juvenile court's authority to terminate his parental rights, and (2) it is undisputed that W.A. lived in the State of Utah at the time the parental termination proceeding commenced.

¶13 Justice HOWE, Justice RUSSON, and Justice WILKINS concur in Associate Chief Justice DURRANT's opinion.

¶14 Chief Justice DURHAM concurs in the result.

IN THE UTAH SUPREME COURT

---ooOoo---

State of Utah, in the interest of W.A., a person under eighteen years of age,

State of Utah,

Petitioner and Appellant and Cross Appellee,

v.

E. A.,

Respondent and Appellee and Cross Appellant.

Case No. 20020236-SC
948450

AMENDED ORDER

This court issued an order dated May 23, 2002, which granted the petition for writ of certiorari, filed pursuant to Rule 48, Utah Rules of Appellate Procedure.

Upon the court's own motion, IT IS HEREBY ORDERED the cross-petition for writ of certiorari, filed by the respondent, E. A. is granted. IT IS FURTHER ORDERED the expedited briefing schedule as established by order dated June 4, 2002, will remain. The respondent and cross-petitioner, will be allowed twenty (20)-days to file a reply to the petitioner's and cross-respondents' reply brief. No extensions of time will be granted to any parties. The case will be set for oral argument immediately.

Dated the 11th day of June 2002.

For the Court:

/s/ Leonard H. Russon
Leonard H. Russon
Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

---ooOoo---

State of Utah, in the interest of W.A., a person under eighteen years of age.

State of Utah,

Petitioner

v.

E. A.,

Respondent.

No. 20020236-SC
20000461-CA
948450

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ORDER

This matter is before the court upon a Petition for Writ of Certiorari, filed pursuant to Rule 48, of the Utah Rules of Appellate Procedure.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari filed on March 27, 2002, by petitioner is granted.

May 23, 2002
Date

FOR THE COURT:
/s/ Christine M. Durham
Christine M. Durham
Chief Justice

IN THE UTAH COURT OF APPEALS

---ooOoo---

State of Utah, in the interest of W.A., a person under eighteen years of age.

D.A.,

Appellant,

v.

State of Utah,

Appellee.

ORDER OF CERTIFICATION

Case No. 20010081-CA

(Filed Feb. 5, 2002)

This case is before the court on its own motion to certify the above-captioned appeal to the Utah Supreme Court for determination. *See* Utah R. App. P. 43.

Based upon the affirmative vote of four or more judges of this court,

IT IS HEREBY ORDERED that the appeal is certified to the Utah Supreme Court for determination.

DATED this 5 day of February, 2002.

FOR THE COURT:

/s/ Norman H. Jackson
Norman H. Jackson
Presiding Judge

This opinion is subject to revision before publication in the Pacific Reporter.

IN THE UTAH COURT OF APPEALS

State of Utah, in the interest of W.A., a person under eighteen years of age.	OPINION (For Official Publication)
	Case No. 20000461-CA
E.A., Appellant, v. State of Utah, Appellee.	FILED (March 7, 2002) 2002 UT App 72

Third District Juvenile, Sandy Department
The Honorable Olof A. Johansson

Attorneys: Scott L. Wiggins, Salt Lake City, for Appellant
Mark L. Shurtleff and Carol L. Verdoia, Salt Lake City, for Appellee
Martha Pierce, Salt Lake City, Guardian Ad Litem

Before Judges Billings, Bench, and Thorne.

THORNE, Judge:

¶1 Appellant E.A. appeals from an order terminating his parental rights to W.A. We reverse.

BACKGROUND

¶2 W.A. was born in February of 1989 to E.A., his biological father, and D.A., his biological mother. Presently, E.A. is incarcerated in Oklahoma after being convicted of sexual abuse of a child and lewd molestation of a child, and D.A. is reportedly incarcerated in Texas for similar convictions. In 1995, a Kentucky court placed W.A. in the temporary custody and guardianship of his sister, D.D. D.D. subsequently moved with W.A. to Utah, and in February of 1998, she contacted the Utah Division of Child and Family Services (DCFS) indicating that she could no longer care for W.A. As a result, DCFS filed a dependency petition regarding W.A.

¶3 Following a dependency hearing, the juvenile court determined W.A. to be a "dependent" child "who is homeless or without proper care through no fault of his parent, guardian, or custodian." Utah Code Ann. § 78-3a-103(1)(h) (Supp. 1998). The court therefore granted the petition and awarded DCFS custody and guardianship of W.A.

¶4 In October of 1998, DCFS and the guardian ad litem filed a petition to terminate E.A.'s parental rights to W.A.[1] E.A. responded with a motion to dismiss the petition, arguing that the juvenile court lacked personal jurisdiction over him. After reviewing E.A.'s argument, the juvenile court concluded that the abandonment of W.A. was an ongoing act, and that this on going act invoked Utah's long-arm statute providing Utah with sufficient minimum

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[1] DCFS and the guardian's office also petitioned to terminate D.A.'s parental rights, however, that petition is not the subject of this appeal.

contacts to establish personal jurisdiction over E.A. Alternatively, the court held that the parent-child relationship was a "status" relationship, and therefore, the "status exception to the personal jurisdiction requirement" provided the court with sufficient jurisdiction to adjudicate the parent-child relationship even if the court lacked personal jurisdiction over E.A.

¶5 Ultimately, the juvenile court determined, inter alia, that E.A. had abandoned W.A., pursuant to Utah Code Ann. §§ 78-3a-407(1), -08(1)(c) (Supp. 1998), and that E.A. was an unfit parent, pursuant to Utah Code Ann. §§ 78-3a-407(3), -8(2)(e), -8(4)(a). The juvenile court also concluded that it was in W.A.'s best interests to terminate E.A.'s parental rights. As a result, the juvenile court terminated E.A.'s parental rights to W.A. E.A. now appeals.

ISSUES AND STANDARDS OF REVIEW

¶6 E.A. argues the juvenile court lacked personal jurisdiction over him because (1) Utah's long-arm statute does not provide for service of process in this matter; and (2) he has no contacts with the State of Utah. "[T]he propriety of the jurisdictional determination . . . [is] a question of law upon which we do not defer to the district court." *Department of Soc. Servs. v. Vijil,* 784 P.2d 1130, 1132 (Utah 1989).[2]

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[2] E.A. also asserts the following errors: (1) the juvenile court erred by denying his Motion to Dismiss for insufficient process; (2) the juvenile court denied him due process by admitting copies of the dependency hearing minutes and the order into evidence, because he was neither represented by counsel nor present at the dependency

(Continued on following page)

ANALYSIS

I. Personal Jurisdiction

¶7 E.A. argues the juvenile court lacked personal jurisdiction over him when it terminated his parental rights. Specifically, E.A. argues that Utah's long-arm statute, Utah Code Ann. § 78-27-24 (Supp. 1998), does not provide for out-of-state service of process in this matter. E.A. also argues that he lacks the requisite "minimum contacts" with Utah necessary to establish personal jurisdiction over him.[3]

¶8 Determining whether personal jurisdiction exists over a nonresident defendant requires a court to undertake the following two-prong analysis:

> First, [this court] must determine whether Utah's long-arm statute encompasses the acts

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hearing; and (3) the juvenile court erred in admitting his nolo contendere plea to sexual abuse of a child and lewd molestation of a child, as well as the Oklahoma judgment sending him to prison to serve a life sentence. As we have concluded that the jurisdictional issue is dispositive of E.A.'s appeal, we note his remaining claims, but do not address them.

[3] The dissent responds to another of E.A.'s arguments concerning the inapplicability of Utah's Uniform Child Custody Jurisdiction and Enforcement Act, *see* Utah Code Ann. § 78-45c-101 to -318 (Supp. 2001), to the present circumstance by citing to the Termination of Parental Rights Act (TPRA), *see* Utah Code Ann. § 78-3a-400-414 (Supp. 2001). Specifically, the dissent focuses on certain "safeguards" extended within the TPRA in an attempt to demonstrate not only that the State has jurisdiction over all termination of parental rights cases where the child resides within the state, but also in an attempt to demonstrate that E.A.'s due process rights were properly considered prior to and during the termination proceedings. What the dissent fails to recognize is that a violation of long held constitutional protections is not permissible simply because other procedural safeguards are satisfied.

> alleged in the complaint. Second, if we conclude that the alleged acts come within the long-arm statute's reach, we must consider whether the exercise of personal jurisdiction over defendant[ ] comports with the due process requirements of the Fourteenth Amendment of the United States Constitution.

Starways, Inc. v. Curry, 1999 UT 50, ¶6, 980 P.2d 204. Because we reach a different conclusion than the juvenile court, we address this analysis in reverse order.

A. Minimum Contacts

¶9 In denying E.A.'s Motion to Dismiss, the juvenile court determined that under the "'contacts' theory[,] . . . jurisdiction lies with this Court." We agree with the juvenile court that E.A. has the requisite "minimum contacts," *International Shoe v. Washington,* 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945), with Utah to satisfy the due process prong of the analysis, albeit for the specific reasons we articulate below.

¶10 The United States Supreme Court has held that the Due Process Clause of the Fourteenth Amendment to the United States Constitution permits a forum state to assert personal jurisdiction over a nonresident defendant only when the defendant has "certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe,* 326 U.S. at 316, 66 S. Ct. at 158 (quoting *Milliken v. Meyer,* 311 U.S. 457, 463, 61 S. Ct. 339, 343 (1940)).

¶11 In *Hanson v. Denckla,* 357 U.S. 235, 78 S. Ct. 1228 (1958), the United States Supreme Court explained that

determining whether a nonresident defendant has the requisite minimum contacts with the forum state

> will vary with the quality and nature of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails [himself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.

Id. at 253, 78 S. Ct. at 1240 (citing *International Shoe,* 326 U.S. at 319, 66 S. Ct. at 159-60). Later, in *Kulko v. Superior Court of California,* 436 U.S. 84, 98 S. Ct. 1690, the Supreme Court reemphasized that "an essential criterion in all cases is whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State." *Id.* at 92, 98 S. Ct. at 1697 (quoting *International Shoe,* 326 U.S. at 319, 66 S. Ct. at 159-60).

¶12 Unlike the facts in *Kulko*,[4] the "quality and nature" of E.A.'s acts, namely, knowingly permitting the State of Utah to provide financial, emotional, and physical care to W.A. "'purposefully availed [E.A.]' of the 'benefits and protections'" of Utah's laws. *Id.* at 94, 98 S. Ct. at 1698 (citing *Shaffer v. Heitner,* 433 U.S. 186, 216, 97 S. Ct. 2569, 2586 (1977)). Although E.A. did not bring W.A. into Utah,

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[4] The Supreme Court determined that appellant's contacts with California, namely "actively and fully consent[ing] to [his daughter] living in California for the school year," were insufficient to show that he had "purposefully avail[ed]" himself of the "benefits and protections of California's laws." *Kulko v. Superior Court of Cal.,* 436 U.S. 84, 94, 98 S. Ct. 1690, 1698 (1978) (quotations and citation omitted).

once W.A. was in DCFS custody, the State, through its child welfare programs established by the Legislature, necessarily provided for W.A.'s well-being. E.A., as a parent, had the responsibility of providing for W.A. and instead chose, for whatever combination of reasons, to allow Utah to step into the role of provider.

¶13 Furthermore, E.A. was aware that DCFS had custody and control of W.A.[5] As such, E.A.'s "'conduct and connection with [Utah] are such that he should reasonably anticipate being haled into court [ ] here'" to adjudicate his parental rights. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474, 105 S. Ct. 2174, 2183 (1985) (quoting *World-Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297, 100 S. Ct. 559, 567 (1980)). We therefore conclude that E.A. has established sufficient minimum contacts with Utah to satisfy due process requirements.

B. Utah's Long-Arm Statute

¶14 The remaining hurdle that must be overcome before Utah can assert personal jurisdiction over E.A. is service of process upon E.A., who has at all times been outside of the State during the pendency of this action, and this hurdle therefore necessarily involves the reach of our long-arm statute. In Utah, a litigant initiates an action through the filing of a complaint or a petition, and service of process upon the named defendants. *See* Utah R. Civ. P. 3-4. When the named defendants are only found out-of-state,

[5] Had E.A. successfully made alternate arrangements for the care of W.A. upon discovering the situation, we may have had a different case.

our long-arm statute provides for jurisdiction in a variety of situations. *See* Utah Code Ann. § 78-27-24 (Supp. 2001).[6]

¶15 Here, the juvenile court attempted to invoke Utah's long-arm statute by determining that E.A.'s abandonment constituted a continuing and tortious act. *See id.* § 78-27-24(3). The juvenile court, however, conceded that Utah's long-arm statute "appears ill-fit to deal with termination of parental rights cases." We agree.

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[6] Any person, notwithstanding section 16-10a-1501, whether or not a citizen or resident of this state, who in person or through an agent does any of the following enumerated acts, submits himself, and if an individual, his personal representative, to the jurisdiction of the courts of this state as to any claim arising out of or related to:

(1) the transaction of any business within this state;

(2) contracting to supply services or goods in this state;

(3) the causing of any injury within this state whether tortious or by breach of warranty;

(4) the ownership, use, or possession of any real estate situated in this state;

(5) contracting to insure any person, property, or risk located within this state at the time of contracting;

(6) with respect to actions of divorce, separate maintenance, or child support, having resided, in the marital relationship, within this state notwithstanding subsequent departure from the state; or the commission in this state of the act giving rise to the claim, so long as that act is not a mere omission, failure to act, or occurrence over which the defendant had no control; or

(7) the commission of sexual intercourse within this state which gives rise to a paternity suit under Title 78, Chapter 45a, to determine paternity for the purpose of establishing responsibility for child support.

Utah Code Ann. 78-27-24 (Supp. 2001).

¶16 We conclude that Utah's long-arm statute does not provide for service of process in this matter. The record does not reflect that E.A. has ever (1) been within the State;[7] (2) conducted business in the State;[8] (3) committed a tortious injury within the State;[9] or (4) owned or used real property situated within the State.[10] While other conduct could be added to the list of actions that would support long-arm jurisdiction, the Legislature has thus far not chosen to do so. Therefore, we must conclude that the long-arm statute is unavailable in this case, and thus, Utah does not have personal jurisdiction over E.A.

II. The Status Exception

¶17 The juvenile court found, in the alternative, that personal jurisdiction was unnecessary, citing the "status" exception, which is mentioned in *Shaffer v. Heitner,* 433 U.S. 186, 208 n.30, 97 S. Ct. 2569, 2582 n.30 (1977). E.A. argues the juvenile court's application of the "status" exception to the personal jurisdiction requirement violated his due process rights. We agree.

¶18 In *Shaffer,* the Supreme Court briefly addressed the existence of a possible exception to the requirement of personal jurisdiction when adjudicating claims involving certain relationships between parties. *Id.* at 208, 97 S. Ct. at 2582. In this discussion, the Court noted, "We do not suggest that jurisdictional doctrines other than those

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[7] *See* Utah Code Ann. § 78-27-24(6), (7).

[8] *See id.* § 78-27-24(1)(3), (5).

[9] *See id.* § 78-27-24(3).

[10] *See id.* § 78-27-24(4).

discussed in text, such as the particularized rules governing adjudications of "status," are inconsistent with the standard of fairness." *Id.* at 208 n.30, 97 S. Ct. at 2582 n.30.[11]

¶19 However, the Supreme Court has yet to hold that a "status" exception applies to proceedings involving the terminations of parental rights. Further, although it is clear that a "status" exception has been applied to divorce proceedings,[12] the Court has expressly concluded that a "status" exception does not apply to the financial aspects of a marital dissolution, i.e., alimony, child support, and property division. *See Kulko v. Superior Court of Cal.*, 436 U.S. 84, 100-01, 98 S. Ct. 1690, 1701 (1978). Perhaps even more importantly, the Supreme Court has expressly stated that it is "plain beyond the need for multiple citation that a natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right."

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[11] The dissent argues that by citing the Traynor article in its "status" footnote, *see Shaffer v. Heitner*, 433 U.S. 186, 208 n.30, 97 S. Ct. 2569, 2582 n.30 (1977), the *Shaffer* court must have "contemplated that child custody adjudications, and more specifically termination proceedings, are included within the "status" exception." We, however, do not agree with this analysis and, moreover, see no support for this position in either *Shaffer* or any Supreme Court case that followed. It is also important to note that while the dissent relies on language from pages 661 and 662 of the Traynor article, the *Shaffer* Court seems to have purposefully avoided citing to this section. It seems unlikely that in citing only to a small portion of the Traynor article in the footnote that the Court intended to adopt all of [sic] language and analysis found in the Traynor article.

[12] The application of the "status" exception to divorce proceedings permits a forum state to dissolve a marriage without ever possessing personal jurisdiction over a party defendant.

Santosky v. Kramer, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 1397 (1982) (quotations and citations omitted). Indeed, the Court terms such rights a "fundamental liberty interest." *Id.* at 759, 102 S. Ct. at 1397.[13]

¶20 Nevertheless, we concede that some jurisdictions have determined the parent-child relationship to be a "status" relationship. Those courts have therefore specifically applied a "status" exception to overcome deficiencies in the personal jurisdiction requirement in proceedings involving the termination of parental rights. *See, e.g., In re Appeal in Maricopa County,* 543 P.2d 454 (Ariz. Ct. App. 1975); *In re M.L.K.,* 768 P.2d 316 (Kan. Ct. App. 1989); *In re M.S.B.,* 611 S.W.2d 704 (Tex. Civ. App. 1981).

¶21 For example, in *In re M.S.B.,* the Texas Court of Civil Appeals defined "status" as "a 'relationship between two persons, which is not temporary in its nature, is not terminable at the will of either and with which the State is concerned. Marriage is a status . . . and so too is the relationship of parent and child, whether natural or adoptive.'" 611 S.W.2d at 706 (quoting Reese, *Marriage in American Conflict of Laws,* 26 Int'l & Comp. L.Q. 952, 953

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[13] The dissent attempts to minimize the impact of *Santosky v. Kramer,* 455 U.S. 745, 102 S. Ct. 1388 (1988), by focusing on the principal holding of the case concerning standards of proof in termination hearings. However, in doing so, the dissent fails to acknowledge the clear language of *Santosky, "[t]he fundamental liberty interest of natural parents* in the care, custody, and management of their child does not evaporate simply because they have not been model parents. . . . " *Id.* at 753, 102 S. Ct. at 1394-95 (emphasis added). Such language highlights the reason for *Santosky* holding that rather than a preponderance of the evidence, clear and convincing evidence was the appropriate standard of proof required to terminate parental rights.

(1977)) (alteration in original). The Texas court thus concluded that "[i]t cannot be doubted that the parent-child relationship creates a status, and that a suit seeking to terminate such relationship is a status adjudication as much as a suit to determine custodial rights." *Id.*

¶22 Similarly, in *In re Appeal in Maricopa County,* the Arizona Court of Appeals explained that the State, "in its capacity as *parens patriae*[,] has a very substantial interest in the [termination] proceeding." 543 P.2d at 459. Accordingly, the court continued, "when the issue is primarily between the state in its *parens patriae* capacity and an absent non-consenting spouse, the state is justified in providing for effective termination proceedings, even in the absence of *in personam* jurisdiction over a non-consenting parent." *Id.*

¶23 However, in light of the Supreme Court's clear declaration that parental rights are a fundamental liberty interest, and that "'state intervention to terminate the relationship between [a parent] and [the] child must be accomplished by procedures meeting the requisites of the Due Process Clause,'" *Santosky,* 455 U.S. at 753, 102 S. Ct. at 1394 (quoting *Lassiter v. Department of Soc. Servs.,* 452 U.S. 18, 37, 101 S. Ct. 2153, 2165 (1981) (Blackmun, J., dissenting)) (alterations in original); *see also Lassiter,* 452 U.S. at 24-32, 101 S. Ct. at 2158-2162, we find it difficult to reconcile the personal jurisdiction requirement necessary to adjudicate contract rights, money damage awards, and support obligations for children with the decisions of these jurisdictions not to require the same

stringent due process and personal jurisdiction requirements for proceedings that would terminate a parent and child relationship.[14]

¶24 Indeed, although the facts of this matter clearly show E.A. to be an unfit parent, and that it is in W.A.'s best interest for the juvenile court to terminate E.A.'s parental rights, we cannot escape the conclusion that applying a "status" exception to termination proceedings may lead to unfortunate consequences in future cases. As the United States Supreme Court has carefully noted:

> The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost

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[14] While we agree with the dissent that several jurisdictions have applied a "status" exception in cases similar to this case, as we have stated we do not find these cases persuasive. *See In re Appeal in Maricopa County,* 543 P.2d 454, 459 (Ariz. Ct. App. 1975); *In re M.L.K.,* 768 P.2d 316, 319 (Kan. Ct. App. 1989); *In re Adoption of Copeland,* 43 S.W.2d 483, 487 (Tenn. Ct. App. 2000). Moreover, our reading of Supreme Court precedent suggests that the nature of termination proceedings demands a strict adherence to procedural safeguards, and that the legal prestidigitation found in the application of "status" exceptions to these cases are unlikely to satisfy those requirements. *See Santosky v. Kramer,* 455 U.S. 743, 753, 102 S. Ct. 1388, 1395 (1982) (stating "If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs."); *Kulko v. Superior Court of Cal.,* 436 U.S. 84, 92, 98 S. Ct. 1690, 1697 (1978) (stating that "While the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff's forum of choice are, of course, to be considered, an essential criterion *in all cases* is whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State." (Citations omitted) (emphasis added)).

> temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the *irretrievable* destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Santosky, 455 U.S. at 753-54, 102 S. Ct. at 1394-95 (emphasis added). "We therefore reject respondent['s] ... claim that a parental rights termination proceeding does not interfere with a fundamental liberty interest." *Id.* at 754 n.7, 102 S. Ct. at 1395 n.7.

¶25 Recognizing the fundamental liberty interest at stake in a proceedings [sic] involving the termination of parental rights, other jurisdictions have held that a state must meet its Fourteenth Amendment obligation to obtain personal jurisdiction over a parent prior to attempting to terminate his or her parental rights. *See In re One Minor Child,* 411 A.2d 951, 952-53 (Del. 1980) (holding no jurisdiction over appellant because of insufficient notice); *In re R.G.,* 611 So. 2d 71 (Fla. Ct. App. 1992) (per curiam); *In re Doe,* 926 P.2d 1290 (Haw. 1996); *Phillips v. Thornerfelt,* Nos. 85-CA-1075-S, 85-CA-1372-S, 1986 Ky. App. LEXIS 1116 (Ky. Ct. App. April 25, 1986); *see also In re Vernon R.,* 991 P.2d 986 (N.M. Ct. App. 1999) (holding that a "status" exception was inapplicable to the specific facts of the case, but leaving open the question when a child's best interest is clearly at issue).

¶26 We find the facts of *In re Doe* to be particularly enlightening. In *Doe,* the subject child (Doe) was born in Australia and later taken to Hawaii by the father, where he sought reinstatement of his suspended Veterans Administration benefits. *See Doe,* 926 P.2d at 1292. The mother allowed the father to take Doe to Hawaii because she "mistakenly thought that Doe would need a visa to accompany her to the Philippines." *See id.*

¶27 At some point, the father became unable to care for Doe and requested assistance from the Philippine Consulate, which, in turn, referred the child to Hawaii's Department of Human Services (DHS). *See id.* DHS placed Doe in an emergency shelter home and ultimately filed a petition to have the family court determine Doe's best interests. *See id.* A summons was issued to the mother, however, she did not receive it until the day of the hearing, and the family court proceeded without personal jurisdiction over her, explaining that "technically this won't bind her because we haven't noticed her." *Id.*

¶28 The family court then conducted five hearings, wherein the mother was unrepresented by counsel and often without notice of the proceedings. *See id.* Throughout this ordeal, the mother regularly corresponded with DHS and the court, pleading for the return of her son. *See id.* at 1293. She also explained that "United States immigration officials refused to recognize [her marriage to the [f]ather] because [he] had not yet divorced a previous wife; as a result, [the] [m]other was unable to obtain a visa until July 1990." *Id.* The court possessed all of this information by March of 1988. *See id.*

¶29 The Philippine Department of Social Welfare (PDSW) conducted social studies and filed a report with the court

recommending that Doe be returned to the mother in the Philippines. *See id.* at 1294. The PDSW report noted that the mother would be afforded additional protection and economic stability by her extended family, and through PDSW assistance if necessary. *See id.* However, the Hawaii family court terminated both the mother's and the father's parental rights. *See id.*

¶30 The mother appealed the family court's decision and the Hawaii Supreme Court reversed concluding that "[the] [m]other's due process rights were violated." *Id.;* (*see In re John Doe* (born 8/6/87), No. 15429 (mem. op. at 12 n.8) (Haw. Feb. 19, 1993)). On remand, after a separate hearing on the issue of personal jurisdiction, the family court ruled that "it had personal jurisdiction" over the mother, and again terminated her parental rights. *Id.*

¶31 The mother again appealed, and the Hawaii Supreme Court again reversed concluding that the mother had "no contact" with Hawaii, and therefore, Hawaii did not have personal jurisdiction over her. *Id.* The court also noted the inherent unfairness of the proceeding against her, explaining that "[the] [m]other was required to travel to Hawai'i as a prerequisite to reunification with her child; notwithstanding her known visa difficulties, DHS held [the] [m]other's absence against her." *Id.* at 1295.

¶32 The court concluded by addressing the applicability of the "status" exception to a proceeding dealing with the termination of parental rights, stating:

> We are aware of the cases supporting the proposition that personal jurisdiction over a nonresident parent is not required for certain "status" determinations – such as child custody under the Uniform Child Custody Jurisdiction Act (UCCJA)

> – so long as the nonresident receives sufficient notice and an opportunity to participate in the proceedings. . . . A principal purpose of the UCCJA, however, is "to have custody litigation take place in the state where the child and his family have the closest connection." *Balestrieri v. Maliska,* 622 So. 2d 561, 563 (Fla. Ct. App. 1993). . . . The Texas Supreme Court has articulated the general rule that "a family relationship is among those matters in which the forum state has such a strong interest that its courts may reasonably make an adjudication affecting that relationship even though one of the parties to the relationship may have had no personal contacts with the forum state." *In re S.A.V.,* 837 S.W.2d 80, 84 (Tex. 1992). . . . But such cases do not involve the exercise of personal jurisdiction in a situation in which neither parent ever was or intended to be a resident of the state. . . . Here, the particular family relationship over which the State of Hawai'i asserts a compelling interest never existed within its jurisdiction because neither of the parents resided in or was domiciled in Hawai'i. The policy underlying the foregoing cases simply does not apply to the present case.

Id. at 1299 (citations omitted).

¶33 Similarly, in *Phillips,* the Kentucky Court of Appeals refused to terminate a father's parental rights because the state lacked personal jurisdiction over him. 1986 Ky. App. LEXIS 1116, at *18. The Kentucky court concluded that "neither [Kentucky's] longarm statute nor those provisions relating to in personam jurisdiction in the UCCJA can confer jurisdiction over [the father] so as to interfere with his parental rights, unless [the father] had done

something to avail himself of the benefits or protections of this forum." *Id.*

¶34 Finally, in *In re Vernon R.,* the New Mexico Court of Appeals upheld a lower court decision refusing to terminate the father's parental rights for lack of personal jurisdiction. *See id.* 991 P.2d 986, 989 (N.M. Ct. App. 1999). The court explained that it agreed with "those courts that have held a straight termination proceeding, not involving custody, adoption, or other similar issues, to fall outside the [U]CCJA." *Id.* at 988. Further, the court explained that it disagreed with the mother's argument that terminating the father's rights "presents a status adjudication [for] which no personal jurisdiction over the parties is required." *Id.*

> [The] [m]other's argument to this effect relies on custody cases, and she urges this Court to extend the same rationale to termination proceedings. We are not inclined to do so, because this would unreasonably extend the rationale of the [U]CCJA to a type of case that it was not intended to cover. The [U]CCJA is concerned with the adjudication of custody issues in an efficient manner that promotes cooperation among states and the best interest of the child, . . . goals which are not significantly advanced by termination of [the] [f]ather's parental rights under these circumstances.

Id.

¶35 The court also noted "the fundamental importance of parental rights," and therefore, "in personam jurisdiction is ordinarily required for termination." *Id.* at 988-89. Notwithstanding its specific ruling, the court did caution that where "the residence and caretaking of a child is at

issue" it may revisit the exception from the personal jurisdiction requirement. *Id.* at 989.

¶36 These jurisdictions have recognized the fundamental liberty interest associated with parental rights, and the absolute necessity of comporting with due process requirements, including the establishment of personal jurisdiction, before depriving a parent of that fundamental interest.

¶37 Finally, we note that in Utah, terminating parental rights requires the juvenile court to make two, relatively separate findings before termination can occur. *See In re C.K.*, 2000 UT App 11, ¶18, 996 P.2d 1059.

> First, the court *must find* that a specific ground for termination exists, finding the parent unfit or incompetent based on a ground enumerated in section 78-3a-407 of the Utah Code. Second, the court *must find* that termination of parental rights serves the best interests of the child. Each finding must be based on clear and convincing evidence.

Id. (emphasis added) (citations omitted). Accordingly, the juvenile court must find some enumerated parental misconduct before determining whether terminating the parent's rights is in the best interest of the child. We believe that such a finding, without first having personal jurisdiction over that parent, would violate due process, particularly when, as in this matter, the actual *misconduct* of E.A. occurred outside of Utah.[15]

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[15] The dissent cites *In re M.C.*, 940 P.2d 1229, 1237 (Utah Ct. App. 1997), in an attempt to distinguish between matters involving support

(Continued on following page)

¶38 In sum, we find the cases recognizing the fundamental importance of parental rights persuasive and note that the United States Supreme Court has yet to apply or extend a "status" exception to termination proceedings. Accordingly, we conclude that the juvenile court erred in relying upon the "status" exception to personal jurisdiction in denying E.A.'s Motion to Dismiss.

¶39 We further cannot escape the conclusion that the judiciary is not the proper branch of government to make state policy concerning the extension of our long-arm jurisdiction over absent parties. Were the legislature to amend the long-arm statute to allow for service of process in these types of cases, Utah could assert personal jurisdiction over E.A., and thus the juvenile court's decision to

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and property, and matters involving parent-child relationships. While we agree that *In re M.C.* states clearly that "the State's policy when abused and neglected children are involved in termination cases [is to hold] [t]he child's welfare and best interest [to be] of paramount importance," 940 P.2d at 1237, we do not see how this policy can overcome the Constitutional requirement that a forum state must first have personal jurisdiction before it can render judgment on a party. *See generally Kulko v. Superior Court of Cal.*, 436 U.S. 84, 91-92, 98 S. Ct. 1690, 1696-97 (1978). We also find unpersuasive the dissent's statement that "the parent alone has constitutionally protected rights and interests [in matters of property and support] because the financial obligation is one borne by the parent." In fact, after carefully reviewing *Kulko,* we conclude that the Supreme Court adopted a position substantially different from that proposed by the dissent, holding not that the parent's financial interests are deserving of protection, but rather that the parent himself is deserving of Due Process protections. *See id.* at 98-100, 98 S. Ct. at 1700-01. Moreover, in discussing the financial interests that were central to the underlying action, the Supreme Court clearly suggested that in the area of child support, the interests of the children are at least as important as the financial interests of the parent. *See id.*

terminate E.A.'s parental rights would be supportable. However, as it stands, service of process in this matter is deficient for failure to comport with Utah's long-arm statute. Accordingly, because we conclude that a "status" exception to the due process requirement of personal jurisdiction does not extend to proceedings to terminate parental rights, the juvenile court did not have personal jurisdiction over E.A. when it terminated his parental rights.[16]

¶40 The decision of the juvenile court is, therefore, reversed.

/s/ William A. Thorne, Jr.
William A. Thorne, Jr., Judge

¶41 I CONCUR:

/s/ Judith M. Billings
Judith M. Billings,
Associate Presiding Judge

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[16] Finally, the dissent notes that it is unlikely the courts of either Kentucky or Oklahoma would accept jurisdiction of this case and that absent such a "competing" state, Utah is in the best position to adjudicate this matter. The analysis set forth in *Kulko* easily disposes of this argument: "the fact that [Utah] may be the '"center of gravity"' or choice-of-law purposes does not mean that [Utah] has personal jurisdiction over the defendant." 436 U.S. at 98, 98 S. Ct. at 1700 (quoting *Hanson v. Denckla,* 357 U.S. 235, 254, 78 S. Ct. 1228, 1240 (1958)). We also note that the record evidences no determination by any other state reflecting an unwillingness to assert their claim of personal jurisdiction over E.A. on behalf of W.A. Absent such a declaration, we are unwilling to declare that a "vacuum" in the law exists and manufacture an exception.

BENCH, Judge (dissenting):

¶42 I respectfully dissent. I believe the analysis of the main opinion is seriously flawed.

¶43 The trial court held that because of the tortious act of abandonment and the failure to pay child support, pursuant to Utah Code Ann. § 78-27-24(3) and (6) (Supp. 2001), our long-arm statute reaches E.A. (Father). Without any analysis whatsoever, the main opinion simply declares that the acts alleged do not fall within our long-arm statute. Although we can affirm without significant analysis, *see State v. Allen,* 839 P.2d 291, 303 (Utah 1992) (declining to analyze or address all claims in writing), we cannot reverse without explaining why.

¶44 Furthermore, given the main opinion's conclusion that our long-arm statute does not afford personal jurisdiction in this case, the analysis of due process under the heading "A. Minimum Contacts" is meaningless dicta. The main opinion recognizes that the first question is "whether Utah's long-arm statute encompasses the acts alleged." *Starways, Inc. v. Curry,* 1999 UT 50, ¶6, 980 P.2d 204. Only if "the alleged acts come within the long-arm statute's reach, [do we] consider whether the exercise of personal jurisdiction over defendants comports with . . . due process." *Id.* It is nonsensical to try to address the points in reverse order.

¶45 Despite the foregoing, my greatest concern with the main opinion relates to its analysis under the heading "II. The Status Exception." Rather than following the mainstream line of cases from other jurisdictions, my colleagues have elected to follow a flawed legal analysis that elevates the rights of a parent over the rights of an innocent child. I believe that is a grave mistake.

¶46 As an alternative to personal jurisdiction, the trial court relied upon what is commonly known as the "status exception." In *Shaffer v. Heitner,* 433 U.S. 186, 97 S. Ct. 2569 (1977), the United States Supreme Court acknowledged that "cases involving the personal status of the plaintiff, such as divorce actions, could be adjudicated in the plaintiff's home State even though the defendant could not be served within that State." *Id.* at 200, 97 S. Ct. at 2578 (citing *Pennoyer v. Neff,* 95 U.S. 714, 733-35 (1878)); *see also Williams v. North Carolina,* 317 U.S. 287, 298-99, 63 S. Ct. 207, 213 (1942) ("Thus it is plain that each state, . . . can alter within its own borders the marriage status of the spouse domiciled there, even though the other spouse is absent."). In *Shaffer,* the Supreme Court stated that the "particularized rules governing adjudication of status" are not inconsistent with the standard of fairness. *Shaffer,* 433 U.S. at 208 n.30, 97 S. Ct. at 2582 n.30.

¶47 The State argues that just as the status exception applies in a divorce context (severing a spousal relationship), it should also apply in a termination of parental rights context (severing a parent-child relationship). I agree.

¶48 In arguing against application of the status exception in this context, Father points to a law review article that the *Shaffer* Court cites to. Father quotes a portion of that article in support of his proposition that the *Shaffer* Court did not intend to include termination of parental rights

within the status exception.[1] The portion of the law review article that Father relies on reads as follows:

> There is an element of contract and some equality of parties in the marital relationship. These are lacking in the parent-child relationship, and the interest of the state therefore becomes correspondingly larger in any action involving parent and child. Contracts of both parties with the state also take on larger and perhaps paramount importance, since the consequences of any action either declaring or terminating the relationship are so momentous to the parties. In conjunction with fair play, these considerations would normally preclude jurisdiction over a non-resident defendant having no contact with the forum state.

Roger J. Traynor, *Is this Conflict Really Necessary?*, 37 Tex. L. Rev. 657, 661 (1959). However, the next sentence, which Father omits, reads:

> Nevertheless, even here we must recognize that the state where a child is present must be competent to regulate his custody whether his parent is present or not, and if the parent cannot be found or has failed to discharge his parental obligations, that state, given the best notice reasonably possible, should be free to promote the interest of the child by permitting his adoption.

Id. at 661-62 (footnote omitted). Hence, in favorably citing to this article, it appears that the *Shaffer* Court

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[1] The United States Supreme Court has never explicitly included or excluded, in the status exception, child custody and termination of parental rights.

contemplated that child custody adjudications, and more specifically termination proceedings, are included within the status exception.

¶49 Although the issue has never been decided in Utah, other jurisdictions have expressly concluded that termination proceedings are included within the status exception. Texas has defined "status" as " 'a relationship between two persons, which is not temporary in its nature, is not terminable at the will of either and with which the State is concerned. Marriage is a status . . . and so too is the relationship of parent and child, whether natural or adopted.' " *In re M.S.B.*, 811 S.W.2d 704, 706 (Tex. Civ. App. 1981) (quoting Reese, *Marriage in American Conflict of Laws,* 26 Int'l & Comp. L.Q. 952, 953 (1977)) (alteration in original). The Texas court concluded that "[i]t cannot be doubted that the parent-child relationship creates a status, and that a suit seeking to terminate such relationship is a status adjudication as much as a suit to determine custodial rights." *Id.*

¶50 Arizona has recognized that the state "in its capacity as *parens patriae* has a very substantial interest in the [termination] proceeding." *In re Appeal in Maricopa County,* 543 P.2d 454, 459 (Ariz. Ct. App. 1975). Because this interest is preeminent, "when the issue is primarily between the state in its *parens patriae* capacity and an absent non-consenting spouse, the state is justified in providing for effective termination proceedings, even in the absence of in personam jurisdiction over a non-consenting parent." *Id.* Other jurisdictions have held similarly. *See, e.g., In re M.L.K.,* 768 P.2d 316, 319 (Kan. Ct. App. 1989) (concluding termination of parental rights "is nothing more than a determination of the legal status between the natural parent and the child," therefore,

status exception applies); *In re Adoption of Copeland,* 43 S.W.3d 483, 487 (Tenn. Ct. App. 2000) (concluding termination proceeding was like custody proceeding because "principal determination is where and with whom a child should or should not live," therefore, a termination proceeding comes within the status exception).

¶51 The main opinion holds that since due process requires personal jurisdiction for a court to adjudicate financial matters, *see Kulko v. Superior Court of California,* 436 U.S. 84, 98 S. Ct. 1690 (1978), then personal jurisdiction must also be required for the dissolution of the parent-child relationship. I disagree. The critical difference is that in matters of support and property, the parent alone has constitutionally protected rights and interests because the financial obligation is one borne personally by the parent. By comparison, matters concerning the parent-child relationship involve constitutionally protected rights and interests of both the parent and the child. We have previously stated that "when abused and neglected children are involved in termination cases: The child's welfare and best interest [are] of paramount importance, not the parent's rights." *In re M.C.,* 940 P.2d 1229, 1237 (Utah Ct. App. 1997).

¶52 Father argues that the status exception should not be applicable because there are no "particularized rules governing" termination proceedings. *Shaffer,* 433 U.S. at 208 n.30, 97 S. Ct. at 2582 n.30. In making this argument Father argues that the Uniform Child Custody Jurisdiction Act (UCCJA), Utah Code Ann. §§ 78-45c-1 to -26 (1996), does not apply. Father argues, therefore, that there are no rules to protect his due process rights. Father refers to *In re R.N.J.,* 908 P.2d 345 (Utah Ct. App. 1995), where this court concluded that "a proceeding involving the

termination of a parent's rights and obligations is not a custody proceeding under the Utah UCCJA." *Id.* at 348.[2] Father misreads this case because *R.N.J.* dealt with the question of subject matter jurisdiction, not personal jurisdiction. In evaluating Utah's statutory scheme, this court determined that the UCCJA did not apply because the Termination of Parental Rights Act (TPRA) is the more specific provision. *See id.* at 348-49. The fact that the UCCJA may not apply to this case does not, however, render the status exception inapplicable.

¶53 Utah Code Ann. § 78-3a-104(1)(e) (1996) confers on the juvenile court "exclusive original jurisdiction in proceedings concerning: . . . the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties." *Id.* The TPRA contains specific rules as to the following: contents of the petition to terminate, *see id.* § 78-3a-405; the notice to be given to the individuals involved, including their right to counsel and the standard of proof required,[3] *see id.*

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[2] The legislature has subsequently overruled *R.N.J.* with the enactment of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which specifically includes "termination of parental rights" in the definition of "child custody proceeding." Utah Code Ann. § 78-45c-02(4) (Supp. 2001). The UCCJEA specifically states that "[p]hysical presence of, or personal jurisdiction over, a party or a child is neither necessary nor sufficient to make a child custody determination." *Id.* at § 78-45c-201(3).

[3] The majority relies heavily on *Santosky v. Kramer,* 455 U.S. 745, 102 S. Ct. 1388 (1982) for the proposition that its designation of parental rights as a fundamental liberty interest precludes our use of the status exception. *See id.* at 753-54, 102 S. Ct. at 1394-95. However, the issue in *Santosky* involved the standard of proof needed to terminate parental rights. The Court held that using "a 'fair preponderance

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§ 78-3a-406; the grounds for termination, *see id.* § 78-3a-407; the evidence required to find grounds for termination, *see id.* § 78-3a-408; special circumstances the court should consider, *see id.* §§ 78-3a-409 to -410; disposition of the child upon termination, *see id.* § 78-3a-411; review following termination, *see id.* § 78-3a-412; and the effect of the decree, *see id.* § 78-3a-413. The TPRA provides ample "particularized rules," *Shaffer,* 433 U.S. at 208 n.30, 97 S.Ct. at 2582 n.30, to ensure that even an absent parent's due process rights are protected during termination proceedings. In this case specifically, Father received notice of the proceedings and a copy of the petition to terminate and was appointed counsel to represent him at all stages of the proceedings. Had he asked, the juvenile court could easily have provided additional accommodations such as allowing him to give a deposition in Oklahoma that could then have been admitted in lieu of testimony, deposing any witnesses on his behalf, or video conferencing.

¶54 I would conclude, therefore, that the Utah juvenile court properly asserted jurisdiction in this case under the status exception. W.A. (Child) was brought to Utah by his legal custodian. Child was thereafter abandoned here, and has been cared for by the State since February 1998. Utah

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of the evidence' standard in [termination proceedings] is inconsistent with due process." *Id.* at 758, 102 S. Ct. at 1397. Utah law is in compliance with the decision in *Santosky,* because Utah courts use a "clear and convincing" evidence standard. Utah Code Ann. § 78-3a-406(3). Thus, I do not see how the majority reaches their conclusion that *Santosky* precludes the use of the status exception.

has immediate access to all relevant information concerning Child's welfare, progress, needs, and potential adoptive family.

¶55 If Utah is unable to assert jurisdiction over this termination proceeding, then no state can.[4] Father suggested in oral argument that Kentucky might be an appropriate forum, because the decree granting custody and guardianship to Child's sister was issued there in 1995. However, "[a] court in a state where none of the parties reside[s] would be unlikely to become involved in view of the doctrine of forum non conveniens and issues of subject matter jurisdiction." *Bartsch v. Bartsch,* 636 N.W.2d 3, 9 (Iowa 2001). Likewise, a court in Oklahoma, which would have personal jurisdiction over Father, is

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[4] The cases the main opinion relies on for preclusion of the status exception are factually dissimilar in this regard. In *In re Doe,* 926 P.2d 1290, 1299 (Hawaii 1996) the child and mother had close connections with the Philippines, and the government in that jurisdiction was already involved in the case. Therefore, the Hawaii court concluded that there was an alternate forum better suited for the termination proceedings. *See id.* In *In re Vernon R.V.,* 991 P.2d 986 (N.M. Ct. App. 1999), " 'the actual physical possession and control of a child' was not at issue in the termination proceedings." *Id.* at 987 (citation omitted). Therefore, the court refused to use the status exception because "there is no issue at this time that requires termination to settle a custody-related question." *Id.* at 988. However, the court also noted that the status exception may be applicable in cases involving termination of parental rights in anticipation of adoption. *See id.* In *Phillips v. Thornerfelt,* Nos. 85-CA-1075-S, 85-CA-1372-S, 1986 Ky. LEXIS 1116 (Ky. Ct. App. April 25, 1986), an unpublished decision, the court does not even discuss the status exception. The court merely concludes that because the mother and father had lived together in California, the child was born in California, and all relevant evidence was in California, the California court had jurisdiction and "had never declined to exercise it." *Id.* at *16.

unlikely to accept subject matter jurisdiction because Child is not physically present in the state, has not resided there since at least 1995, if ever, and is not where Child was abandoned. *See* Okla. Stat. Ann. tit. 10, § 7002-1.1(A)(1) (1998) (outlining circumstances where court has jurisdiction over child). An Oklahoma court is additionally unlikely to accept jurisdiction when another state has taken over the care and custody of Child, seen to his therapy and other needs, and placed him with a foster family he has bonded to and who is desirous of adopting him, since that state would be in a better position to evaluate the long-term best interests of Child. No other state is competing with Utah for jurisdiction, nor has any other state expressed an interest in doing so.

¶56 I would hold that the status exception readily applies to this case. None of the other issues raised here have any merit. I would therefore affirm the judgment of the juvenile court.

/s/ Russell W. Bench
Russell W. Bench, Judge

IN THE JUDICIAL DISTRICT JUVENILE COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, in the W.A. (02-15-89) A person(s) under the age of eighteen years.	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE** **Case No(s): 948450** (Filed Jun. 27, 2000) JUDGE JOHANSSON

The above named matter was tried to this Court on 1-4-99, 4-12-99, 6-8-99, 8-3-99, and 8-27-99, pursuant to a joint Verified Petition for Termination of Parental Rights filed 10-8-98, by the Assistant Attorney General, Lisa Nagel, and the Office of the Guardian ad litem, Susan Eisenman, attorney. Neither parent appeared at the Court proceedings, but each was represented by Court-appointed counsel, Jim Shirley for the mother, and David Burns for the father, respectively. There were several intervening hearings concerning motions filed by the parties. The Court previously entered findings relative to the father, dated 3-22-2000, in which it permanently terminated his parental rights. Thus, the following findings only pertain to the mother.

The Court, having reviewed the testimony of witnesses, considered the exhibits, and listened to arguments of counsel, finds and concludes that the State and Guardian ad litem have met the burden of proving the allegations in its petition by clear and convincing evidence, and enters the following

FINDINGS OF FACT:

1. Since 1995, by court decree in Kentucky, said child has been in the care and custody of D.D., a relative;

2. Subsequently, D.D. moved to Utah with the child, and in 1998, was no longer able to care for him. D.D. contacted the Division of Child and Family Services, a petition was filed, and said child was adjudicated a dependent child on 2-25-98, (see Exhibit #5);

3. In 1996, the mother was convicted of sexually abusing a minor child, a felony, by the District Court of Tulsa County, Oklahoma, and was sentenced by the Court to serve ten years imprisonment under custody and control of the Oklahoma Department of Corrections;

4. The mother's conviction – sexual abuse of a child – constitutes sexually cruel and abusive conduct towards a child;

5. The mother was convicted of a felony in 1996, and her incarceration for said crime deprived the child of a normal home life for more than one year. Specifically, the mother was incarcerated from 1996 thru the completion of the trial in 1999, thereby depriving W.A. of a normal home life for a period of at least three years;

6. The mother did have contact with the child through letters that were sent from the correctional facilities where she resided. Approximately 24 letters were received by the Court, although approximately 9 of those letters consisted of cartoons with only a short message for the minor child;

7. The minor child, W.A., wrote 1 letter to his mother. The record is void of any other contact between the mother and child;

8. That said child has adjusted well in his foster/adoptive placement where he has been since June, 1999; that the foster parents are desirous of adopting him, and are physically, financially, and emotionally able to provide for him. He has bonded with and has been integrated into the family unit.

Wherefore, based upon the Findings of Fact, the Court enters the following

CONCLUSIONS OF LAW:

1. That the mother has abandoned said child, pursuant to U.C.A. §78-3a-407(1), and U.C.A. §78-3a-408(1)(c);

2. That the mother is unfit pursuant to U.C.A. §78-3a-407(3), and U.C.A. §78-3a-408(2)(e) and U.C.A. §78-3a-408(4)(a);

3. The Court has given due consideration to the factors enumerated in U.C.A. §78-3a-409 and U.C.A. §78-3a-410;

4. That it would be in the best interest of said child to have the mother's rights permanently terminated in that said child has adjusted well in his foster family and his familial identity is with them.

Wherefore, pursuant to the findings of fact and conclusions of law, the Court enters the following

DECREE:

1. That the mother's parental rights to said child are permanently terminated, including any and all residual rights;

2. That custody and guardianship of said child are continued with the Division of Child and Family Services for adoptive placement;

3. That an appeal from this decree may be taken to the Court of Appeals by filing a notice of appeal with the clerk of court within thirty (30) days from the date of this decree.

4. That the matter is set for review in ninety (90) days upon agency petition if the child has not been permanently placed. If the child has been permanently placed, the review hearing will not be held.

Dated this 27th day of June, 2000.

[SEAL]

/s/ Olof A. Johansson
Olof A. Johansson, Judge

cc: NAGEL (AG)
EISENMAN (GAL)
SHIRLEY, attorney for mother
MOTHER
DCFS

In the Third District Juvenile Court
Salt Lake County, State of Utah

State of Utah, interest of W.A. (2-15-89) A person under eighteen years	Findings of Fact, Conclusions of Law, and Decree (Filed Mar. 22, 2000) Case No. 948450

The above matter was tried to this Court on 1-4-99, 4-12-99, 6-8-99, 8-3-99, and 8-27-99, pursuant to a joint Verified Petition for Termination of Parental Rights, filed on 10-8-98, by the Assistant Attorney General, Lisa Nagel, and the Office of Guardian ad Litem, Susan Eisenman. Neither parent appeared at court proceedings but were represented by Court-appointed counsel, Jim Shirley for the mother, and David Burns, for the father, respectively. There were several intervening hearings dealing with motions filed by the parties. The findings entered herein relate only to the father, E.A. The mother has filed a motion which is currently set for argument before this Court.

The Court, having reviewed the testimony of witnesses, considered the exhibits, and listened to arguments of counsel, finds and concludes that the State has met its burden of proving the allegations in its Petition by clear and convincing evidence, and enters its

Findings of Fact: (as to E.A., father)

1. Since 1995, by court decree in Kentucky, said child has been in the care and custody of D.D., a relative;

2. Subsequently, D.D. moved to Utah with the child, and in 1998, was no longer able to care for him. D.D. contacted the Division of Child and Family Services, a

petition was filed, and he was adjudicated as a Dependent child before this Court on 2-25-98, (see Exhibit #5);

3. In 1996, the father was convicted of felony offenses of (a) sexual abuse of a minor child, and (b) lewd molestation of a child, and sentenced by the Oklahoma Court to serve terms of 20 years and life imprisonment, respectively;

4. From March, 1998, to August, 1998, while imprisoned, the father corresponded approximately five (5) times with said child via letters, either screened by the DCFS caseworker, or processed with the child in the course of his therapy with the therapist;

5. From August, 1998, to the time of trial on this matter, the father was writing letters (or cards) to the child on a regular basis (stipulated facts submitted to the Court);

6. The record is void of any other contact between the father and said child since 1996;

7. That said child is doing well in a foster/adoptive placement where he has been since June, 1999; the foster parents are desirous of adopting him, and are physically, financially, and emotionally, able to provide for him.

Wherefore, based upon the Findings of Fact, the Court enters the following

Conclusions of Law:

1. That the father has abandoned said child, pursuant to UCA 78-3a-407(1), and UCA 78-3a-408(1)(c);

2. That the father is unfit pursuant to UCA 78-3a-407(3), and UCA 78-3a-408(2)(e) and UCA 78-3a-408(4)(a);

3. The Court has given due consideration to the factors enumerated in UCA 78-3a-409, and UCA 78-3a-410;

4. That it would be in the best interest of said child to have the father's rights permanently terminated in that said child has adjusted well in his foster family and has been integrated into that family and his familial identity is with them.

Wherefore, pursuant to the Findings of Fact and Conclusions of Law, the Court enters the following

Decree:

1. That the father's parental rights to said child, including any and all residual parental rights, are permanently terminated;

2. That custody and guardianship of said child are continued with the Division of Child and Family Services;

3. That an appeal from this Decree may be taken to the Court of Appeals by filing a Notice of Appeal with the clerk of court within thirty (30) days from the date of this Decree.

Dated this 22nd day of March, 2000.

[SEAL]

/s/ Olof A. Johansson
Olof A. Johansson, Judge

cc: David Burns, Attorney of record for father
E.A., father
Nagel (AG)
Eisenman (GAL)
Shirley, attorney for mother
DCFS

IN THE THIRD DISTRICT JUVENILE COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

W.A. 2-15-89	RULING on Motion to Dismiss Case # 948450 (Filed Apr. 16, 1999)

It is this Court's opinion that under either the "contacts" theory of the long-arm statute, UCA 78-27-24, or the "status exception" found in the In re Appeal in Maricopa County Juvenile Action No. JS-734, 534 P.2d 454 (Ariz. 1975), jurisdiction lies with this Court. The Court's analysis follows.

Although the long-arm statute appears ill-fit to deal with termination of parental rights cases, the Court identifies the following "contacts" within the State of Utah, sufficient to confer jurisdiction over this action.

a. the Court does not fully agree with counsels analysis that " . . . the basis for termination involves allegations of conduct which transpired outside of Utah." It is true that the initial incarceration, or acts by the parents which led to their incarceration, may have occurred outside Utah. However, the alleged abandonment is an on-going act which is daily transpiring in Utah, (i.e., no contact with the child; not paying child support, which is one of the enumerated grounds for jurisdiction over a non-resident, under UCA 78-27-24(6); no firm intention to resume physical custody of the child; failure to show normal interest of a natural parent, etc.) Until such time as a parent attempts to rehabilitate the abandonment by doing something to re-establish contact with the child, the alleged abandonment continues;

b. abandonment may also constitute a tortious act, i.e., depriving a child of parental love, affection, and emotional support, under UCA 78-27-24(3);

c. this Court has exercised continuing jurisdiction over this matter since the initial adjudication before this Court in February, 1998; the parents have not objected to such exercise of jurisdiction, and no other Court has been asked to exercise jurisdiction in this matter;

d. the child has lived with his legal guardian, D.D., in Utah since shortly after 1995, when she brought him to Utah to reside with her. D.D. was granted legal custody of said child by an order from the Kentucky Courts;

e. some evidence either parent could present at trial also could exist in Utah, in that any contact by a parent with the child, or agency, or legal custodian, since the arrival of the child in Utah, would be relevant evidence regarding any issue of abandonment;

f. the theory of "forum non conveniens" is not persuasive as both parents are incarcerated and any expense of travel to this jurisdiction would have to be borne by a government agency, most probably the State of Utah. It could be argued that a visit to Utah for trial purposes might be a welcome break for both parents from their confinement.

Furthermore, the Court is persuaded that jurisdiction would likewise lie with this Court under the doctrine of "status" exception to personal jurisdiction because the action involves a termination of parental rights under the Maricopa case, ibid. Public policy would compel such

as any other conclusion would lead to illogical or unconscionable consequences to a child caught in factual circumstances similar to these.

Wherefore, the Motion to Dismiss filed by each parent is denied.

Dated this ~~12th~~ 16th oaj day of April, 1999.

[SEAL]

/s/ Olof A. Johansson
Olof A. Johansson, Judge

cc: Lisa Nagel
Susan Eisenman
Jim Shirley
David Burns
D.A., mother
E.A., father